TRANSCRIPT OF RECORD.

163-701

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 825.

THE QUAKER CITY NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

NOLAN COUNTY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FILED DECEMBER 11, 1895.

(16,115.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 11, 1895.

a In the United States Circuit Court of Appeals, Fifth Circuit.

THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,
vs.
NOLAN COUNTY, Defendant in Error.

Writ of error from the United States circuit court for the northern district of Texas, sitting at Dallas, Texas.

Record.

1 UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceeding had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held, pursuant to law, on the third Monday of November, A. D. 1894, in the court-room of said court, in the city of New Orleans, State of Louisiana, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable John Bruce, United States district judge for the northern and middle districts of Alabama.

2 THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,
v.
NOLAN COUNTY, Defendant in Error.

Be it remembered that heretofore, to wit, on the 30th day of April, 1894, a transcript of the record of the above-styled cause from the circuit court of the United States for the western district of Texas was filed in the office of the clerk of said United States circuit court of appeals, and is in the words and figures following, to wit:

3 In the United States Circuit Court of Appeals, Fifth Circuit.

THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,
vs.
NOLAN COUNTY, Defendant in Error.

Now comes The Quaker City National Bank, plaintiff in error in the above-stated cause, and Nolan County, defendant in error in said cause, by their respective attorneys, and, for the purpose of a hearing and decision of the said cause by the United States circuit court of appeals, agree that the following parts of the record in said cause, and none other, shall be printed, to wit:

1. Caption and style of the cause.

2. Plaintiff's first amended original petition, together with the exhibits thereto attached.
3. Defendant's first amended original answer.
4. Plaintiff's first supplemental petition.
5. Opinion of the court.
6. Judgment of the court.
7. Order extending time to file bill of exceptions.
8. Assignment of errors.

And it is further agreed by and between the said parties that the said cause may be heard and determined upon the parts of the record so printed.

JOHN J. BUTTS,
Attorney for the Plaintiff in Error, The Quaker City National Bank.
W. W. SOOKS,
Attorney for the Plaintiff in Error, Nolan County.

4 *Caption.*

Be it remembered, that at a term of the circuit court of the United States, in the fifth circuit thereof and in and for the northern district of Texas, at Dallas, begun and holden at Dallas, Texas, on the 8th day of January, A. D. 1894, and which term adjourned on the 9th day of March, A. D. 1894, the Hon. John B. Rector, United States district judge for the northern district of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to wit:

THE QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY.
No. 1487. No. 1487.

Plaintiff's First Amended Original Petition. Filed January 19th, 1894.

In the Circuit Court of the United States within and for the Northern District of Texas, Sitting at Dallas, Texas, in said Northern District.

THE QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY.
No. 1487.

Comes now The Quaker City National Bank, plaintiff in the above numbered and stated cause, leave of the court being first had, and files this, its first amended original petition, in lieu of and as a substitute for its original petition in said cause filed on the 2nd day of April, 1892, and says:

In the Circuit Court of the United States in and for the Northern District of Texas, Sitting at Dallas, Texas, in and for said Northern District.

5 An action at law.

To the May term, A. D. 1892, of said court—to the honorable judge of said court:

The Quaker City National Bank, hereinafter styled plaintiff, complaining of Nolan County, hereinafter styled defendant, respectfully showeth the court that plaintiff is a private corporation created and organized under and by virtue of the laws of the United States; that its principal office, place of business and domicile are in, and that it is a citizen of, the county of Guernsey and State of Ohio; that the defendant at the times and in the matters hereinafter mentioned and complained of was, and still is, a duly organized county of the State of Texas; that it is a body corporate and politic and is a citizen of the State of Texas and of the said northern district thereof; and that T. J. Beall, who resides within the said county, is the duly qualified and acting county judge thereof:

That at the time of the execution and delivery of each and every of the negotiable bonds and coupons hereinafter mentioned and described, defendant, by virtue of the authority in it vested by the constitution of the State of Texas and chapter nine (9) of General Laws of the regular session of the seventeenth legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same," approved February 11th, 1881, had power and was fully authorized to issue negotiable commercial bonds, with interest coupons attached, for the purpose of erecting a court-house at its county-seat, and to levy a tax to pay for the same.

1. That heretofore, to wit, on the 10th day of April, 1882,
6 defendant, for the purpose of erecting a court-house at its county-seat, and pursuant to the power and authority in it vested by the constitution of the State of Texas, and the aforesaid act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same," approved February 11th, 1881, by its proper officers and agents, made, executed, issued and, for a valuable consideration, delivered to Martin, Byrne & Johnson its certain three negotiable coupon bonds in writing, bearing date of April 5th, 1882, and numbered, respectively, 6, 7 and 8, each for the sum of one thousand ($1,000.00) dollars, payable to said Martin, Byrne & Johnson, or bearer, fifteen years after date thereof, but redeemable at any time at the pleasure of defendant, with interest thereon at the rate of eight per cent. per annum, interest payable annually on the 10th day of April of each year on presentation of the interest coupons thereto attached as they severally became due and payable; that each and every of the said three negotiable bonds Nos. 6, 7 and 8

are of the same tenor and effect and contain the same recitals, except as to serial numbers; and a copy of said bond No. 6 is hereto attached, marked "Exhibit A" and made a part hereof, and reference is thereunto made; that defendant at the time it made, executed, issued and delivered the said three bonds Nos. 6, 7 and 8, to wit, on the 10th day of April, 1882, by its proper officers and agents made, executed, issued and, for a valuable consideration, delivered to the said Martin, Byrne & Johnson its certain eighteen (18) negotiable interest coupons in writing, each for the sum of eighty
7 (80.00) dollars, and payable to bearer as follows, to wit: Three payable April 10th, 1888; three payable April 10th, 1889; three payable April 10th, 1890; three payable April 10th, 1891; three payable April 10th, 1892, and three payable April 10th, 1893, the same representing installments of interest to accrue and become due and payable on the said bonds Nos. 6, 7 and 8 on the 10th day of April, 1888, 1889, 1890, 1891, 1892 and 1893, respectively; that the said eighteen interest coupons are all of the same tenor and effect, except that they have different serial numbers, recite that they are for interest on different bonds and matured at different dates—six are numbered, respectively, 6, 7, 8, 9, 10 and 11, and recite that they are for interest on the said bond No. 6, and matured on April 10th, 1888, 1889, 1890, 1891, 1892 and 1893, respectively; six are numbered, respectively, 6, 7, 8, 9, 10 and 11, recite that they are for interest on the said bond No. 7, and matured on April 10th, 1888, 1889, 1890, 1891, 1892 and 1893; six are numbered, respectively, 6, 7, 8, 9, 10 and 12, recite that they are for interest on the said bond No. 8, and matured on April 10th, 1888, 1889, 1890, 1891, 1892 and 1893, respectively, a copy of the said interest coupon No. 6 for an installment of interest on the said bond No. 6 is hereto attached, marked "Exhibit B" and made a part hereof, and reference is thereunto made; that when the said bonds Nos. 6, 7 and 8 were made, executed, issued and delivered, as aforesaid, and when the same were purchased by plaintiff as hereinafter shown, the said eighteen interest coupons were attached thereto, six of the said interest coupons being attached to each of said bonds; that thereafter, to wit, on the 5th day of December, 1885, plaintiff purchased the said bonds and coupons in open market, in ordinary
8 course of business, and paid a valuable consideration therefor, and that it is still the owner and holder thereof; that when it purchased the said bonds and coupons and paid the consideration therefor, as aforesaid, it had no knowledge or notice whatsoever of any vice, defect or infirmity in the issuance or disposition of the said bonds, or any or either of them, nor of the want of power in defendant to issue the same, or any or either of them; by reason whereof the defendant became liable and bound and promised to pay to plaintiff the said several sums of money in the said eighteen interest coupons specified, according to the tenor and effect thereof, with interest thereon from maturity until paid at the rate of eight per centum per annum.

2. That heretofore, on to wit, the 5th day of June, 1882, the defendant, for the purpose of erecting a court-house at its county-seat,

and pursuant to the power and authority in it vested, by and in accordance with the provisions of, the constitution of the State of Texas, and the aforesaid act of the legislature of the State of Texas entitled "An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same," approved February 11th, 1881, by its proper officers and agents, made, executed, issued and, for a valuable consideration, sold and delivered to Matthews & Whitaker, of the city of St. Louis, State of Missouri, its certain four (4) negotiable coupon bonds in writing, bearing date of April 10th, 1882, numbered, respectively, 1, 2, 3 and 4, each for the sum of one thousand ($1,000.00) dollars, and payable to bearer fifteen years after date, but redeemable at any time at the option of defendant, with interest thereon at the rate of eight per cent per annum, interest payable annually on the 10th day of April of each
9 year on presentation of the proper interest coupons thereto attached, as they severally became due and payable, and providing that if any installment of interest be not paid when due, the same should bear interest therefrom until paid at the rate of eight per cent. per annum; that each and every of the said four bonds are of the same tenor and effect and contain the same recitals, except as to serial number, a copy of the said bond No. 1 is hereto attached marked "Exhibit C" and made a part hereof, and reference is thereunto made; that defendant at the time it made, executed, issued, sold and delivered the said bonds Nos. 1, 2, 3 and 4 as aforesaid, on to wit, June 5th, 1882, by its proper officers and agents, made, executed, issued and, for a valuable consideration, delivered to the said Matthews & Whitaker its certain twenty-four (24) negotiable interest coupons in writing, each for the sum of eighty ($80) dollars, payable to bearer as follows: Four payable April 10th, 1888; four payable April 10th, 1889; four payable April 10th, 1890; four payable April 10th, 1891; four payable April 10th, 1892, and four payable April 10th, 1893, with interest from maturity until paid at the rate of eight per cent. per annum; that each and every of the said twenty-four interest coupons are of the same tenor and effect, except that they matured at different dates, as aforesaid, and recite that they are for interest on different bonds, each of the said coupons recites the number of the particular bond for which it represents the installment of interest; a copy of one of the said interest coupons for an installment of interest on the said bond No. 1 is hereto attached, marked "Exhibit D," and made a part hereof, and reference is thereunto made; that when the said four negotiable bonds were made, executed, issued, sold and
10 delivered, as aforesaid, and when the same were purchased by plaintiff, as hereinafter shown, the said twenty-four interest coupons were attached thereto, six of them being attached to each of said bonds, and represented installments of interest to accrue and become due and payable thereon on the 10th day of April, 1888, 1889, 1890, 1891, 1892 and 1893, respectively; that thereafter, on to wit, the 5th day of December, 1885, plaintiff purchased the said bonds and coupons in open market, in ordinary

course of business, and paid a valuable consideration therefor, and that it is still the owner and holder thereof; that when it purchased the said bonds and coupons and paid the consideration therefor, as aeforesaid, it had no knowledge or notice whatsoever of any vice, defect or infirmity in the issuance or disposition of the said bonds and coupons, or any or either of them, nor any want of power in defendant to issue the same, or any or either of them, by reason whereof defendant became liable and bound and promised to pay to plaintiff the said several sums of money in the said twenty-four interest coupons specified, according to the tenor and effect thereof, with interest thereon from maturity until paid at the rate of eight per cent. per annum.

3. That heretofore, on to wit, the 21st day of June, 1882, defendant, for the purpose of erecting a court-house at its county-seat, and pursuant to the power and authority in it vested by, and in accordance with the provisions of, the constitution of the State of Texas, and the aforesaid act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for same," approved February 11th, 1881, by its proper officers and agents, made, executed,
11 issued, and for valuable consideration, sold and delivered to Wernse & Deictman, of the city of St. Louis, State of Missouri, its certain three negotiable coupon bonds in writing, bearing date of June 21st, 1882, numbered, respectively, 24, 25, and 26, each for the sum of one thousand ($1,000.00) dollars, payable to bearer fifteen years after date thereof, but redeemable at any time at the option of defendant, with interest thereon at the rate of eight per cent. per annum, interest payable annually on the 10th day of April of each year, on presentation of the proper interest coupons thereto attached as they severally became due and payable, and providing that if any installment of interest be not paid when due, the same should bear interest therefrom until paid at the rate of eight per centum per annum; that, except as to date and serial number, each and every of the said bonds Nos. 24, 25, and 26, are of the same tenor and effect as the aforesaid bond No. 1, a copy of which is hereto attached, marked "Exhibit C," and made a part of this petition, and reference is here made to said exhibit for a more particular description of the said bonds Nos. 24, 25, and 26; that defendant, at the time it made, executed, issued, sold, and delivered the said bonds Nos. 24, 25, and 26, to wit, on the 21st day of June, 1882, by its proper officers and agents, made, executed, and, for a valuable consideration, delivered to said Wernse & Deictman its certain eighteen (18) negotiable interest coupons in writing, each for the sum of eighty ($80.00) dollars, payable to bearer as follows: Three payable April 10th, 1888; three payable April 10th, 1889; three payable April 10th, 1890; three payable April 10th, 1891; three payable April 10th, 1892, and three payable April 10th, 1893,
12 with interest from maturity until paid at the rate of eight per centum per annum; that each and every of said eighteen (18) interest coupons are of the same tenor and effect as the

aforesaid interest coupons for an installment of interest on the aforesaid bond No. 1, a copy of which said coupon is hereto attached marked "Exhibit D," and made a part of this petition, except that they matured at different dates, and recite that they are for interest on different bonds; each coupon reciting the number of the particular bond for which it represents an installment of interest, and reference is here made to the said Exhibit D for a more particular description of said eighteen coupons; that when the said bonds Nos. 24, 25, and 26 were made, executed, sold, and delivered, as aforesaid, and when the same were purchased by plaintiff, as hereinafter shown, the said eighteen interest coupons were attached thereto and represented installments of interest to accrue and become due and payable thereon on April 10th, 1888, 1889, 1890, 1891, 1892, and 1893, respectively; that thereafter, on to wit, the 5th day of December, 1885, plaintiff purchased the said bonds and coupons in open market, in ordinary course of business, and paid a valuable consideration therefor, and that it is still the owner and holder thereof; that when it purchased the said bonds and coupons and paid the consideration therefor, as aforesaid, it had no knowledge or notice whatsoever of any vice, defect, or infirmity in the issuance or disposition of the said bonds or coupons, or any or either of them, nor of any want of power in defendant to issue the same, or any or either of them, by reason whereof defendant became liable and bound and promised plaintiff to pay him the said several sums of money in said eighteen interest coupons specified according
13 to the tenor and effect thereof, with interest thereon from maturity till paid at the rate of eight per centum per annum.

4. That heretofore, to wit, the 15th day of November, 1883, defendant, for the purpose of erecting a court-house at its county-seat, and pursuant to the power and authority in it vested by, and in accordance with the provisions of the constitution of, the State of Texas and the aforesaid act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this States to issue bonds for the erection of a court-house, and to levy a tax to pay for the same," approved February 11th, 1881, by its proper officers and agents, made, executed, issued and, for a valuable consideration, sold and delivered to Adoue & Lobitt, of the city of Dallas, State of Texas, its certain negotiable coupon bond in writing, numbered 27, and bearing date of June 21st, 1882, for the sum of one thousand ($1,000.00) dollars, and payable to bearer fifteen years after date thereof, but redeemable at any time at the option of defendant, with interest thereon at the rate of eight per cent. per annum, interest payable annually on the 10th day of April of each year on presentation of the proper interest coupon thereto attached as they severally became due and payable, and providing that if any installment of interest be not paid when due the same should bear interest therefrom at the rate of eight per centum per annum; that the said bond No. 27, except as to date and serial number, is of the same tenor and effect and contains the said recitals as the aforesaid bond No. 1, a copy of which

is hereto attached marked "Exhibit C" and made a part of this petition, and reference is here made to the said Exhibit C for a more particular description of the said bond No. 27; that defend-
14 ant, at the time it made, executed, issued, sold and delivered the said bond No. 27, to wit, on the 15th day of November, 1883, by its proper officers and agents, made, executed and, for a valuable consideration, delivered to the said Adoue & Lobitt its certain six negotiable interest coupons in writing, each for the sum of eighty (880) dollars, and payable to bearer on the 10th day of April, 1888, 1889, 1890, 1891, 1892 and 1893, respectively, with interest from maturity until paid at the rate of eight per cent. per annum; that except as to time of maturity and that they recite that they are for interest on different bond, the six interest coupons are of the same tenor and effect as the aforesaid interest coupon for an installment of interest on the aforesaid bond No. 1, a copy of which said interest coupon is hereto attached marked "Exhibit D" and made a part of this petition, and reference is here made to the said Exhibit D for a more particular description of the said six interest coupons; that when the said bond No. 27 was made, executed, issued, sold and delivered, as aforesaid, and when the same was purchased by plaintiff, as hereinafter shown, the said six interest coupons were attached thereto, and represented installments of interest to accrue and become due and payable thereon on the 10th day of April, 1888, 1889, 1890, 1891, 1892 and 1893, respectively; that thereafter on, to wit, the 5th day of December, 1885, plaintiff purchased the said bond and coupons in open market in ordinary course of business and paid a valuable consideration therefor, and that it is still the owner and holder of the same; that when it purchased the said bond and coupons and paid the consideration therefor, as aforesaid, it had no knowledge or notice whatsoever of any vice, defect or infirmity in the issuance and disposition of the said
15 bond, nor of any want of power in defendant to issue the same by reason whereof defendant became liable and bound and promised to pay plaintiff the said several sums of money in the said six interest coupons specified, according to the tenor and effect thereof, with interest thereon from maturity till paid at the rate of eight per centum per annum.

And plaintiff further shows to the court that the said county of Nolan made, executed, issued and delivered each and every of its hereinbefore-mentioned bonds and coupons by and through its county commissioners' court; that the said court was, at the time of the issuance, execution and delivery of each and every of the said bonds and coupons, the only duly and lawfully constituted agent of the said county, clothed with the power and authority of issuing bonds such as those aforesaid; that each and every of the said bonds recites and states on its face that it was issued and executed in puruance of the provisions of law relative thereto, and purports and represents that said bond had been and was duly and lawfully issued and executed; that the said county of Nolan caused the said bonds to be issued and executed and to contain recitals showing the same to have been issued and executed according to

and in compliance with law, and showing all the requirements of law relating to the issuance and execution of said bonds out to the world as having been duly and lawfully issued and executed, and as the valid and binding obligations of said county, and that plaintiff, relying on the said statements and representations in the said bonds contained and by said county made, as hereinbefore stated, purchased the said bonds and coupons before maturity of any or either of them, in open market, in ordinary course of business, and
16 paid the full face or par value therefor; that when he purchased the said bonds and coupons and paid the consideration therefor he had no knowledge or notice of any vice, defect or infirmity in the issuance or disposition of the said bonds, or any or either of them, nor of any want of power in defendant county to issue them; by reason whereof the defendant county is estopped to deny that the said bonds and coupons, or any or either of them, were duly and lawfully issued, executed and delivered, or that they, or any of them, are legal and binding obligations of said Nolan county.

6. And plaintiff further shows to the court that the defendant Nolan County, acting by and through its county commissioners' court, at the time of issuing and executing the said bonds, levied a sufficient tax upon the taxable property of said county to pay the interest on the said bonds and to provide a sinking fund for their redemption at maturity.

That during the years 1881, 1882, 1883, 1884 and 1885 the said defendant, Nolan County, acting by and through its county commissioners' court, levied and collected a sufficient tax to pay the interest on said bonds, and paid the interest thereon for each and every of the said years when the same became due and payable.

That by levying a sufficient tax to pay the interest and provide a sinking fund for the redemption of the said bonds at maturity, and by levying and collecting a tax to pay the interest thereon for the years 1881, 1882, 1883, 1884 and 1885, and by paying the interest thereon when due, the said defendant, Nolan County, ratified and confirmed the issuance, execution and delivery of said bonds and represented and held out the said bonds and coupons to the world
to have been duly and legally issued and to be legal and
17 binding obligations of said county; and that plaintiff, relying on the representations of the said county, made as herein stated, purchased the said bonds and coupons in open market, in ordinary course of business, before the maturity of any or either of them, and paid the full face or par value therefor, without any knowledge or notice of any vice, defect or infirmity in the issuance of the said bonds, or any or either of them; and by reason whereof plaintiff says that the defendant county is estopped to deny that the said bonds, or any or either of them, were duly and legally issued, or that the county had authority to issue them, or any or either of them, or that at the time they were issued and executed the county commissioners' court levied a sufficient tax to pay the interest and provide a sinking fund for their redemption at maturity.

7. And plaintiff further shows to the court that at the time of the issuance and execution of the said bonds, the defendant Nolan County had power and authority to issue negotiable commercial bonds, with interest coupons attached, for the purpose of erecting a court-house at its county-seat; that the said bonds, and each and every of them, were issued and executed for the purpose of erecting a court-house at the county-seat of the defendant Nolan County, and that the proceeds of each and every of the said bonds were used for the purpose of erecting a court-house at the county-seat of the defendant county.

That the recitals and statements made on the face of each and every of the said bonds, represent that it was issued for the purpose of erecting a court-house at the county-seat of defendant county, and that the defendant county, by the recitals and statements made on the face of the bonds, has represented and held them out
18 to the world as having been issued, executed and delivered for the purpose of erecting a court-house at the county-seat of said county; and that when plaintiff purchased said bonds and coupons as hereinbefore shown, he relied on the said statements and representations made and contained in the said bonds; by reason whereof plaintiff says that the defendant county is estopped to deny that the said bonds, or any or either of them, were issued, executed and delivered for the purpose of erecting a court-house at its county-seat.

8. And plaintiff shows to the court that the said several sums of money in the aforesaid sixty-six (66) negotiable interest coupons specified, though long past due, remain wholly unpaid, and that the defendant, though often thereunto requested, has hitherto failed and refused, and still refuses to pay the same or any part thereof; that each and every of the aforesaid sixty-six interest coupons were, before being sued on, duly and properly presented to the county commissioners' court of defendant county for allowance and payment, but that the said county commissioners' court refused to audit, allow or pay the same, or any part thereof, and denies any liability or obligation on the part of defendant on account of the said coupons, or any of them.

Wherefore, premises considered, plaintiff prays that defendant be served with process in the terms of the law, and for judgment for its debt, interest and all costs of suit in this behalf expended.

WILLIAMS & BUTTS,
Attorneys for The Quaker City National Bank, Plaintiff.

19 "EXHIBIT A."

No. 6. UNITED STATES OF AMERICA. $1,000.00.

Court-house Coupon Bond.

NOLAN COUNTY, }
State of Texas. }

Know all men by these presents, that the County of Nolan, in the State of Texas acknowledges itself indebted to Martin, Byrne &

Johnson, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which sum the said county promises to pay, for value received, at Sweet Water, Nolan county, Texas, ten years after date hereof, but redeemable at any time at the pleasure of Nolan county, together with interest thereon at the rate of eight per centum per annum, payable annually on the 10th day of April of each year, on presentation and surrender of coupons hereto attached as they severally become due and payable.

This bond is issued in accordance with the provisions of an act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for same."

Approved February 21st, 1879.

Seal of County Commissioners' Court.

In testimony whereof I hereunto affix my official signature and official seal of said county, at Sweet Water, this the 6th day of April, A. D. 1882.

WILLIAM BARNETT,
Judge County Court, Nolan County, Texas.

Countersigned.
W. C. JOHNSON,
County Clerk, Nolan County, Texas.

Registered 15th day of April, A. D. 1882.
J. H. FOWLER,
County Treasurer, Nolan County, Texas.

20 "EXHIBIT B."

No. 6. $80.00.

The County of Nolan, State of Texas, promises to pay bearer eighty dollars at Sweet Water, Texas, on the 10th day of April, 1888, being interest for one year on bond No. 6.

WILLIAM BARNETT,
Judge County Court, Nolan County, Texas.

"EXHIBIT C."

No. 1. UNITED STATES OF AMERICA. $1,000.00.

Nolan County Court-house Bond.

Interest 8 per cent. per annum, payable at the city of St. Louis, Missouri.

10–15 *Years' Bond.*

Know all men by these presents, that in pursuance of an act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this State

to issue bonds for the erection of a court-house, and to levy a tax to pay for the same," approved February 11th, 1881, and in further pursuance of an order of the county commissioners' court of the county of Nolan aforesaid, entered upon the records thereof, at the February term, 1882, authorizing the issue of the bonds of said county, with interest coupons attached, for the purpose of building a court-house in said Nolan county, said bonds running not exceeding fifteen years, and redeemable at the pleasure of said county after ten years. Now, therefore, the said Nolan County, in the State of Texas, acknowledges itself indebted, and for value received,
21 promises to pay to —— ——, or bearer, at the Merchants' National bank, in the city of St. Louis, and State of Missouri, the sum of one thousand dollars, fifteen years after date hereof, with interest at the rate of eight per cent. per annum, payable annually on the 10th day of April of each year, upon the presentation of the proper coupons hereto attached at the Merchants' National bank, in the city of St. Louis, State of Missouri. And in case of failure to pay any of said coupons at maturity thereof, the same shall bear interest at the rate of eight per centum per annum from maturity until paid. This bond is payable at any time after the expiration of ten years, at the option of the county commissioners' court of said Nolan county.

In testimony whereof, the said County of Nolan has executed this bond by the county judge in and for said county, under the order of the county commissioners' court thereof, countersigned by the county clerk and registered by the treasurer thereof, at the city of Sweet Water, in the county of Nolan and State of Texas, this 10th day of April, A. D. 1882.

[Seal of County Commissioners' Court.]

WILLIAM BARNETT,
County Judge, Nolan County.
W. C. JOHNSON,
Clerk County Court, Nolan County.
J. H. FOWLER, *Treasurer.*

"EXHIBIT D."

$80.00. $80.00.

On the 10th day of April, A. D. 1888, the county of Nolan, in the State of Texas, promises to pay to —— —— or bearer,
22 the sum of eighty dollars, payable at the Merchants' National bank, in the city of St. Louis, State of Missouri, being one year's interest to date on bond No. 1 issued in behalf of the said Nolan county. If not paid at maturity to bear interest therefrom at the rate of eight per centum per annum until paid.

WILLIAM BARNETT,
County Judge, Nolan County.
W. C. JOHNSON,
Clerk County Court, Nolan County.

The foregoing has the following endorsement, to wit:

The Quaker City National Bank *vs.* Nolan County. No. 1487. Plaintiff's first amended original petition. Filed January 19, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Defendant's Amend. Orig. Answer. Filed January 10th, 1894.

United States Circuit Court for the Northern District of Texas, at Dallas.

QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY. } No. 1487.

And now comes the defendant and by leave of court amends its original answer, filed on the 16th day of May, 1892, and as a substitute for said answer, says:

1. The petition of the plaintiff is insufficient in law, and of this it prays the judgment of the court.

2. And for special exception to said petition, defendant says it is insufficient, inasmuch as it charges that the bonds and coupons therein referred to and described were executed and issued in accordance with the constitution and laws of the State of Texas, without alleging the performance of the acts, or the existence of the facts necessary to be done and to exist before a debt could be created against defendant.

23 3. And defendant, for further special exception to said petition, says that it is insufficient in the following respects:

A. Because it is not alleged that at the time of, or before the attempt to create said debts, the county commissioners' court of Nolan county made provisions for the levy of a tax to pay the interest, and provide a sinking fund of two per cent., as required by sections 5 and 7 of art. XI of the constitution of the State of Texas.

B. Because it does not allege the value of the taxable property in the defendant county at the date of the pretended authority to issue said bonds nor at the date of their execution and issuance, nor does it charge facts to show that said county had in it sufficient property to authorize it to create the debts sued upon, nor what amount of other valid debts there existed against defendant county at, and before, the pretended issuance of the bonds sued upon, nor does it show that defendant county, by its commissioners' court, did, at or before the pretended creation of said debt, levy an annual ad valorem tax on the property in said county sufficient to pay the interest thereon and create a sinking fund for the redemption of said bonds, not exceeding one-fourth of one per cent. for any one year, as required by the act of the legislature of the State of Texas, approved the 11th day of February A. D. 1881.

C. Because it does not allege facts to show that the pretended bonds sued upon, together with other antecedent debts of defendant county, if such existed, nor that they did exist, could be liquidated in ten years by a tax of one-fourth of one per cent. as required by the third section of the above-mentioned act.

D. Because it does not allege that any of said bonds were signed by the county judge and countersigned by the county clerk
24 and registered by the county treasurer of defendant county, before they were delivered, nor that any of them were so signed or registered, and if any, which of them, as is required by the fifth section of said act of the legislature.

And for further answer defendant denies all and singular the allegations contained in this petition, and of this it puts itself on the country.

And for special answer defendant says, if any of the pretended obligations in plaintiff's petition mentioned, were in other respects lawfully executed by this defendant, which it does not admit, still none of them are lawful demands against it, because before any of them were executed or delivered, defendant had already created and there was then existing and outstanding against it, other debts fully equal to its lawful power to make debts.

Defendant charges that among the debts so existing and outstanding against it are four bonds for one thousand dollars each, issued on, to wit: the fifth day of April, 1882, to Martin, Bryne & Johnson, numbered one to four inclusive, and now owned by the State of Texas, and five bonds for the sum of one thousand dollars each, numbered 10, 11, 12, 13 and 14 of the series ordered by the county commissioners' court of defendant county, to be issued and referred to in the order of said court of the dates: February 18th, 1882; March 22nd, 1882; and April 15th, 1882, said five bonds being now owned by the State of Texas. All of the said nine bonds were null and void in their inception, but they were validated from their original issue in favor of the State of Texas, by an act of the legislature of said State, approved the 25th day of May, 1885, according to the interpretation and effect given said act by the district
25 court of Travis county and the supreme court of the State of Texas, in a suit brought by said State against defendant county.

Defendant charges that the total assessed value of its taxable property, as shown by its assessment-rolls, was as follows for the years named, to wit: For the year 1881 it was $361,770.00; for the year 1882 it was $908,276.00; for the year 1883 it was $1,684,615.00; for the year 1884 it was $1,953,755.00; for the year 1885 it was $1,855,278.00, of which defendant puts itself upon the country.

LEAKE, HENRY & REEVES,
COWAN & FISHER,
Attorneys for Defendant.

The foregoing has the following endorsement, to wit:

No. 1487. Quaker City National Bank *vs.* Nolan County. Defendant's amended original answer. Filed Jan'y 10th, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Plaintiff's First Supplemental Petition. Filed January 19, 1894.

United States Circuit Court for the Northern District of Texas, at Dallas.

THE QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY. } No. 1487.

Now comes plaintiff, by leave of court, and files this, its first supplemental petition, by way of replication to defendant's first amended original answer herein filed, and says:

1. The defendant's said answer is insufficient in law, and shows no defense to plaintiff's cause of action, and of this it prays judgment of the court.

2. And for special exception to said answer plaintiff says the same states conclusions of law and not facts.

3. And for further special exception to said answer plain-
26 tiff says it does not allege facts which show that the bonds therein mentioned are valid obligations of defendant county.

4. And for further special exception to said answer, says the same does not show that the bonds therein mentioned come within the terms and provisions of the validating act therein referred to.

5. And for further special exception to said answer plaintiff says said answer shows that the bonds therein referred to as valid obligations of defendant were invalid and of no force or effect until validated by the validating act of the legislature of the State of Texas, and validation of the bonds held by the State of Texas under said act would not affect plaintiff's rights nor the validity of its bonds.

6. And for further special exception to said answer plaintiff says that it is not shown that the debt alleged to be outstanding at the time plaintiff's bonds were issued was created for the purpose of erecting a court-house.

7. And for further special exception to said answer plaintiff says that it is not shown that plaintiff had any notice of the debt, or bonds, alleged to have been outstanding when it purchased the bonds in suit.

8. And for further special exception to said answer, plaintiff says it is not shown that at the time it purchased the bonds in suit it had any notice or knowledge of the existence of any outstanding debts or bonds to be validated by the said act of the legislature referred to in said answer.

9. And for further answer plaintiff denies all and singular the allegations in said answer contained, and of this it puts itself upon the country.

10. And for special answer plaintiff says, that if for any
27 reason its said bonds were invalid when issued by defendant county, that the same have been validated and made legal and binding obligations of defendant by the act of the legislature of the State of Texas, approved May 15th, 1885, validating bonds held by the

State school fund; that the State of Texas owned a portion of each series of bonds issued by defendant county, and that plaintiff also owns, and here sues upon, a portion of each series of bonds issued by defendant; that the issuance of each series of bonds by defendant county was one act, and the legislature could only validate the bonds, or any of them, by validating the act of the commissioners' court by which said bonds were issued. That by validating the bonds of defendant county owned by the State of Texas, the legislature of the State of Texas, by the act aforesaid, also validated plaintiff's bonds, and made them legal and binding obligations of defendant county.

WILLIAMS & BUTTS,
Attorneys for Plaintiff, Quaker City National Bank.

The foregoing has the following endorsement, to wit:
No. 1487. Quaker City National Bank *vs.* Nolan County. Plaintiff's first supplemental petition. Filed Jan'y 19, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Opinion of the Court. Filed January 31st, 1894.

THE QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY. } No. 1487.

In this case the plaintiff sues the defendant for eighteen coupons of $80.00 each, detached from bonds 6, 7 and 8 of $1,000.00 each, issued by Nolan county on or about April 10th, 1882, and delivered to Martin, Byrne & Johnson. Plaintiff also sues in this case
28 on twenty-four coupons of $80 each, detached from bonds 1, 2, 3 and 4, issued by Nolan county and delivered to Matthews & Whitaker, each of said bonds calling for $1,000.00 and dated April 10th, 1882. Plaintiff also sues for eighteen coupons of $80 each, detached from bonds 24, 25 and 26 for $1,000.00 each, issued by Nolan county and dated June 21st, 1882, and delivered to Wernse & Deictman. Plaintiff also sues on six coupons of $80 each, detached from bond No. 27, issued by Nolan county, dated June 21st, 1882, for the sum of $1,000.00 and delivered to Adoue & Lobitt.

The defendant answered by a general denial, and further pleads that before any of said bonds were executed or delivered defendant had already created and there was then existing and outstanding against it other debts fully equal to its lawful power to make debts. Defendant charges that among the debts so existing and outstanding against it are four bonds of $1,000.00 each, issued on the 5th day of April, 1882, to Martin, Byrne & Johnson, numbers 1 to 4, inclusive, and now owned by the State of Texas, and five bonds for the sum of $1,000.00, numbered 10, 11, 12, 13 and 14, referred to in the orders of the commissioners' court of said county, of the dates February 18th, 1882, March 22nd, 1882, and April 15th, 1882, and that said five bonds are now owned by the State of Texas. That all of

said nine bonds were void in their inception, but they were validated from their original issue in favor of the State of Texas by the act of the legislature of the State of Texas approved the 25th day of May, 1885. Then defendant says the total assessed value of its taxable property, as shown by its assessment-rolls, was as follows:

For the year 1881 $361,770.00, for the year 1882 $908,276.00,
29 for 1883 $1,684,615.00, for 1884 $1,953,755.00, for 1885 $1,855,278.00.

2. A jury was waived. The agreed statement of facts in this case are as follows:

QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY.

Now comes The Quaker City National Bank, plaintiff, by Williams & Butts, its attorneys, and Nolan County, defendant, by Leake, Henry & Reeves and Cowan & Fisher, its attorneys, and for the purpose of a trial of the above numbered and stated cause, agree to the following facts, to wit:

1. The County of Nolan, defendant, was organized in January (10th), 1881, and thereupon became, and ever since hath remained and still is a body corporate and politic; and the first term of its commissioners' court was held on the 28th day of January, 1881.

2. The total assessed value of property, as assessed for the county of Nolan for the year 1881, was $361,770.00, for the year 1882 $908,276.00, for the year 1883 $1,684,615.00, for the year 1884 $1,953,755.00, for the year 1885 $1,855,278.00, for the year 1886 $1,756,814.00, and for the year 1887 $1,757,061.00.

3. By the statute law in force in Texas from 1879 to the present time the assessment of all property for taxation in the several counties is required to be made by the assessor between the first day of January and the first day of June of the current year with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. The assessor is required to submit all lists of property rendered to him prior to the first Monday in June to the board of equali-
30 zation, which is composed of the county commissioners' court of his county, on or before the first Monday in June, or as soon thereafter as practicable, for their inspection, approval and correction, or equalization, and after the board shall have returned the approved lists to the assessor, he shall then make out his rolls in triplicate, one of which is required to be filed in the county clerk's office, and one in the office of the State comptroller and one to be delivered to the county collector, which must be done on or before the first day of October of the year, if possible, at which time the collection of taxes begins.

4. On February 4th, 1881, the county commissioners' court of Nolan county entered an order of record levying a tax of one-fourth of one per centum for court-house purposes, and a tax of one-fourth

of one per centum for jail purposes; at this time Nolan county owed no court-house debt.

5. On May 11th, 1881, the county commissioners' court of Nolan county ordered that bids to build a jail to cost not exceeding $10,000.00 be advertised for. On May 11th, 1881, the county commissioners' court advertised for bids to build a jail to cost not exceeding $10,000.00; and on June 14th, 1881, the plans of Martin, Byrne & Johnson for said jail were adopted, and the contract awarded them at a cost of $8,755.00, to be paid for in coupon bonds of the county; and on October 4th, 1881, a committee was appointed by the county commissioners' court of Nolan county to see that the contract for jail and court-house combined was properly carried out.

6. On April 5th, 1882, an order was entered on the minutes of the county commissioners' court receiving the jail as built by Martin, Byrne & Johnson, and authorizing the county judge (who
31 was Wm. Barnett) to receive the keys and settle for the same. Some time after this, about April 10th, 1882, Wm. Barnett, as county judge, and W. C. Johnson, as county clerk, issued nine bonds in the name of said county, eight of them for the sum of one thousand dollars and the other for the sum of seven hundred and forty-five dollars, and delivered the said bonds to the contractors, Martin, Byrne & Johnson, in payment for the said jail. There is no order on the minutes of the county commissioners' court of said county authorizing the county judge and county clerk, or any one else, to issue and deliver the said bonds, unless the above, in connection with the orders mentioned in the fifth clause of this agreement is construed to be such authority, which is a question left open, to be decided by the court on the trial of this cause. The bonds first mentioned in plaintiff's petition as numbers 6, 7 and 8, being three of these bonds. Following is a copy of one of said bonds, all of which are of the same tenor and effect and contain the same recitals, save as to amount, date, time of maturity and serial numbers:

UNITED STATES OF AMERICA.

No. 5. *Court-house Coupon Bond.* $1,000.00.

NOLAN COUNTY, }
State of Texas. }

Know all men by these presents, that the County of Nolan, in the State of Texas, acknowledges itself indebted unto Martin, Byrne & Johnson, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which sum the said county promises to pay, for value received, at Sweet Water, Nolan county, Texas, ten years after date hereof, but redeemable at any time at the pleasure of said county, together with interest thereon at
32 the rate of eight per centum per annum, payable annually on the 10th day of April in each year on presentation and surrender of coupons hereto attached as they severally become due and payable.

This bond is issued in accordance with the provisions of an act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same, approved February 21, 1879."

In testimony whereof I hereunto affix my official signature and official seal of said county, at Sweet Water, Texas, this the first day of December, A. D. 1881.

[Seal of County Commissioners' Court.]

WILLIAM BARNETT,
County Judge, Nolan County, Texas.

Countersigned. W. C. JOHNSON,
Clerk County Court, Nolan County, Texas.

Registered 10th day of January, A. D. 1882.

J. H. FOWLER,
County Treasurer, Nolan County, Texas.

7. On February 18th, 1882, the county commissioners' court of Nolan county entered an order of record that a court-house should be built at the county-seat during the year 1882 at a cost of not less than $20,000.00, and that $20,000.00 in fifteen-year coupon bonds, bearing interest at the rate of eight per cent. per annum, be issued at once and sold, and the proceeds applied to the building of a court-house; said bonds to be redeemable at the pleasure of the county at any time after ten years from date, and J. W. Posey was ap-
33 pointed the agent of the county to sell said bonds at a commission of ten per cent. for his services, which commissions were to cover all costs of lithographing and disposing of said bonds.

8. On March 20th, 1882, it was ordered by said court that the cost of the court-house should not exceed $23,000.00, and said Posey was continued as agent of said county to sell the bonds, authorized to fill in the blank spaces with the names of purchasers, and ten per cent. commissions awarded him, which commissions were to cover all discounts and cost of selling, as well as preparing the bonds. On April 15th, 1882, the county commissioners' court amended the order of February 18th, 1882, so as to make the bonds redeemable at the pleasure of the county at any time after ten years, which redeemable clause has been interlined in the previous order also. The $20,000.00 fifteen-year eight per cent. coupon bonds that had been printed under the original order were returned and destroyed, and it was ordered that twenty eight per cent. coupon bonds of $1,000.00 each be lithographed and substituted for the bonds returned and destroyed.

9. On April 29th, 1882, the contract for building court-house was let to J. M. Archer for $22,000.00. June 19th, 1882, it was ordered that seven bonds of $1,000.00 each be issued to complete the court-house, and that J. W. Posey be continued to negotiate the sale of the bonds as before.

10. May 9th, 1882, the county commissioners' court entered an order of record levying a tax of one-fourth of one per centum for

court-house purposes, and a tax of one-fourth of one per centum for jail purposes. At the time this order was entered Nolan county owed no court-house debt except the debt created by the bonds
34 mentioned in this agreement as having been issued prior to this time.

11. November 20th, 1882, it was ordered by the county commissioners' court that J. M. Archer, the contractor, be paid three bonds, Nos. 21, 22 and 23, at ninety cents on the dollar, to cover $2,700.00 due him as payment for extra work on the court-house over and above said contract.

12. On June 2nd, 1883, it was ordered by the county commissioners' court that W. B. Simpson & Co. be appointed agents to sell court-house bonds Nos. 24, 25 and 26.

13. On November 8th, 1883, three bonds of $1,000.00 each, numbered, respectively, 28, 29 and 30, were, by said court, ordered to be issued to complete the court-house, and ordered delivered to Thos. Trammell & Co., to be by them sold to the State comptroller for the usual commissions.

14. November 15th, 1884, report of W. B. Simpson & Co. of sale of bonds Nos. 24, 25 and 26 for $2,900.00 was received by the county commissioners' court, and three per cent. commissions thereon for the sale was allowed them.

15. From the county records it appears that by order of the county commissioners' court of said county, court-house bonds were issued by the said county as follows:

First. Series of $20,000.00 court-house bonds ordered sold by J. W. Posey, consisting of twenty bonds of $1,000.00 each, being numbered from one to twenty, inclusive, dated April 10th, 1882.

Second. Three bonds of like tenor and effect as the twenty above named for $1,000.00 each, being Nos. 21, 22 and 23, and awarded to J. M. Archer for extra work, and were dated June 18th, 1882,
35 and were delivered to J. M. Archer by order of the commissioners' court, November 20th, 1882.

Third. Three court-house bonds of $1,000.00 each, being Nos. 24 25 and 26, which were ordered to be issued and delivered to W. B. Simpson & Co., to be by them sold for the county; these bonds bore date of June 21st, 1882.

Fourth. Court-house bond No. 27 bore date of June 21st, 1882, and was sold to Flippin, Adoue & Lobitt, of Dallas, Texas, by the agent of the county in the latter part of the year 1883, for $850.00.

Fifth. Three court-house bonds Nos. 28, 29 and 30 for $1,000.00 each, were issued about November 8th, 1883, and were delivered to Thos. Trammel & Co., and were by them sold to the State of Texas.

The first nine bonds mentioned as sold to Martin, Byrne & Johnson were issued for the construction of the jail; the other thirty bonds were sold and their proceeds applied by the county commissioners' court to the construction of a court-house for Nolan county, and both jail and court-house herein referred to were erected at the county-seat of Nolan county.

16. The county's agent, J. W. Posey, had twenty-seven of the

court-house bonds delivered to him; twenty of these, Nos. 1 to 20, inclusive, he sold to Matthews & Whitaker, of St. Louis, Missouri, for ninety-two cents of the dollar, and delivered the same to them on the 5th day of June, 1882; bond No. 27 was sold to Flippin, Adoue & Lobitt, of Dallas, Texas, for $850.00 and delivered to them in the latter part of the year 1883, and he delivered the three bonds ordered to be delivered by the county commissioners' court to J. M. Archer, the contractor, on November 20th, 1882. W. B.
36 Simpson & Co., agents of the county, sold and delivered to Wernse & Deictman, of St. Louis, Missouri, the three bonds, Nos. 24, 25 and 26, dated June 21st, 1882, on June 19th, 1883. Thos. Trammell & Co. sold and delivered to the State of Texas the three bonds, being Nos. 28, 29 and 30, about November 8th, 1883.

Following is a copy of one of the series of court house bonds, issued as above, all of which are of the same tenor and effect, save as to date and serial number:

UNITED STATES OF AMERICA, *State of Texas.*

No. 20. *Nolan County Court-house Bond.* $1,000.00.

Interest 8 per cent. per annum, payable at the city of St. Louis, Missouri.

10–15 *Years' Bond.*

Know all men by these presents, that, in pursuance of an act of the legislature of the State of Texas, entitled "An act authorizing the county commissioners' court- of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same," approved February 11th, 1881, and in further pursuance of an order of the county commissioners' court of the county of Nolan, aforesaid, entered upon the records of the court thereof, at the February term, 1882, authorizing the issue of the bonds of said county, with interest coupons attached, for the purpose of building a court-house in said Nolan county, said bonds running not exceeding fifteen years and redeemable at the pleasure of said county after ten years.

Now, therefore, the said Nolan County, in the State of Texas, acknowledges itself indebted, and for value received, prom-
37 ises to pay to —— —— or bearer, at the Merchants' National bank, in the city of St. Louis, and State of Missouri, the sum of one thousand dollars, fifteen years after date hereof, with interest at the rate of eight per cent. per annum, payable annually on the 10th day of April of each year upon presentation of the proper coupons of interest hereto attached, at the Merchants' National bank, of the said city of St. Louis, and State of Missouri.

In case of failure to pay any of said coupons at maturity thereof, the same shall bear interest at the rate of eight per centum per annum from maturity until paid. This bond is payable at any time

after the expiration of ten years, at the option of the county commissioners' court of said Nolan county.

In testimony whereof, the said county of Nolan has execured this bond by the county judge in and for said county, under the seal of the county commissioners' court thereof, signing his name and affixing the seal of his office thereto, countersigned by the county clerk, and registered by the treasurer thereof, at the city of Sweet Water in the county of Nolan and State of Texas, this 10th day of April, A. D. 1882.

[Seal of County Commissioners' Court.]

WM. BARNETT,
County Judge, Nolan County.
W. C. JOHNSON,
Clerk Nolan County Court.
J. H. FOWLER, *Treasurer.*

17. The records of the county treasurer of Nolan county show that court-house bonds were registered as follows: March
38 15th, 1882, Nos. 1 to 20 inclusive, for $1,000.00 each, bearing date of March 6th, 1882; and seven other bonds numbered 21 to 27, inclusive, for $1,000.00, dated April 10th, 1882, were registered June 23rd, 1882, there are no other bonds registered in the county treasurer's office. Said records do not show any registration of bonds involved in this suit.

18. November 16th, 1887, an order was passed by the county commissioners' court of Nolan county, and entered upon the records of said court, repudiating all the aforesaid bonds, the entire
39.

19. The first three bonds Nos. 6, 7 and 8 and the coupons for interest thereon, declared on in plaintiff's petition, are of the first set above mentioned, issued to pay for construction of the jail. The bonds Nos. 1, 2, 3, 4, 24, 25, 26 and 27 each for $1,000.00 and the coupons for interest thereon, declared on in plaintiff's petition, are of the second series and were issued and sold as aforesaid, and their proceeds applied to pay for the construction of a court-house for Nolan county.

20. At the time of making the contract with Martin, Byrne & Johnson, to build the jail, Nolan county had no jail or court-house; at the time of making the contract with J. M. Archer, to build court-house, Nolan county had no court-house, except the jail which it was then using for court-house purposes.

21. Following is a copy of one of the interest coupons for an installment of interest on one of the first series of bonds issued to Martin, Byrne & Johnson, all of which coupons are of the same tenor and effect, save as to amount, time of maturity, serial number and that they recite that they are for interest on different bonds.

39 6. $80.00.

The County of Nolan, State of Texas, promises to pay to bearer

eighty dollars, at Sweet Water, Texas, on the 10th day of April, 1888, being interest for one year on bond No. 5.

WILLIAM BARNETT,
Judge County Court, Nolan County, Texas.

22. Following is a copy of one of the interest coupons for installment of interest on one of the second series of bonds issued to pay for the construction of court-house, all of which coupons are of the same tenor and effect, save as to time of maturity, and that they recite that they are for interest on different bonds:

$80.00. $800.00.

On the 10th day of April, A. D. 1888, the County of Nolan, in the State of Texas, promises to pay —— —— or bearer, the sum of eighty dollars, payable at the Merchants' National bank, in the city of St. Louis, State of Missouri, being one year's interest due to date on bond No. 20, issued in behalf of said Nolan county. If not paid at maturity, to bear interest therefrom at the rate of eight per centum per annum until paid.

WILLIAM BARNETT,
County Judge, Nolan County.
W. C. JOHNSON,
County Clerk, Nolan County.

23. At the time the bonds and coupons hereinbefore mentioned and described were executed, William Barnett was county judge of Nolan county, W. C. Johnson was county clerk of said county, and J. H. Fowler was the treasurer thereof, and their respective signatures appearing on the said bonds and coupons are genuine.

40 24. That plaintiff is the owner and holder of the bonds and coupons mentioned and described in its petition; that it purchased the same in open market, in ordinary course of business, before the maturity of any or either of said bonds or coupons, but that it did not purchase any or either of them directly from Nolan county, or its officers or agents; that it purchased the said bonds and coupons on the 5th day of December, 1885, and paid the full face or par value therefor; and that when it purchased the said bonds and coupons and paid the consideration therefor, it had no knowledge whatsoever of any defect, irregularity or infirmity in the issuance or disposition of the said bonds, or any or either of them, nor of any want of power in Nolan county to issue them, save such constructive notice as the law imputes to it by reason of the recitals in the bonds, the minutes of the county commissioners' court of Nolan county, the assessment-rolls of said county, and notice of the law authorizing and governing the issue of bonds by counties in Texas, and the limitation placed on their issuance by law; and the question whether or not the law charges plaintiff with notice of the contents of such recitals, minutes and assessment-rolls, is left to the decision of this court, as well as whether or not plaintiff in making the purchase of said bonds was bound to inquire into the condition of Nolan county, and the action of the commissioner-' court concerning the issuance of said bonds.

25. That the coupons sued upon by the plaintiff in this cause were clipped from the bonds mentioned and described in its petition, respectively, and that they represent installments of interest due on the said bonds for the years 1888, 1889, 1890, 1891, 1892, and 1893.

41 26. The county commissioners' court of Nolan county for the years 1881, 1882, 1883, 1884 and 1885 levied and collected a tax of one-fourth of one per centum on the assessed values of said county for court-house purposes, and a tax of one-fourth of one per centum for jail purposes, and for the years since 1885 one-fourth of one per centum for court-house purposes, and has paid all interest falling due, except one or two years when there was a few months' delay in the payment of interest on some of said bonds, up to and including the installment of interest due April 10th, 1887.

27. The ownership of the respective bonds issued by Nolan county, as hereinabove recited, is as follows:

(1) The State of Texas purchased bonds Nos. 1, 2, 3 and 4 of the first series, issued to Martin, Byrne & Johnson, or bearer, and also Nos. 10, 11, 13 and 14 of the first series of regular court-house bonds, ordered sold by J. W. Posey, as hereinabove stated; and also court-house bonds Nos. 28, 29 and 30, issued as hereinabove recited. The State of Texas instituted suit upon the coupons attached to these bonds in the district court of Travis county on the — day of ——, 1889, and recovered judgment in said court thereon, on the 25th day of October, 1889, which said judgment was affirmed on appeal by the supreme court of Texas December —, 1891.

(2) Plaintiff in this cause, The Quaker City National Bank, owns bonds Nos. 6, 7 and 8 of the first series issued to Martin, Byrne & Johnson, as hereinabove recited, and also bonds Nos. 1, 2, 3, 4, 24, 25, 26 and 27 of the second series of bonds issued for court-house purposes and ordered sold by J. W. Posey, as hereinabove recited, and the matured coupons are in controversy in this suit.

42 (3) Alonzo White, of Missouri, is the owner of bonds Nos. 5 and 9 of the first series issued to Martin, Byrne & Johnson, as hereinabove recited; also bonds Nos. 5, 6, 7, 8, 9, 15, 16, 17, 18, 19 and 20 of the second series of court-house bonds issued and disposed of by J. W. Posey, as hereinabove recited.

(4) Bonds Nos. 21, 22 and 23 of the court-house issue, and disposed of as hereinabove recited, are in the possession of Adoue & Lobitt, of Dallas, Texas, who claim to be the owners thereof, and no action has been instituted thereon in any court.

29. It is further agreed by and between the parties to this suit that the foregoing shall be and constitute the facts to be used on the trial of said cause, and that the said cause may be tried and determined by the court upon said facts, and the law applicable thereto, and trial by jury is expressly waived.

LEAKE, HENRY, MILLER & REEVES,
COWAN & FISHER,
Attorneys for Defendant, Nolan County.
WILLIAMS & BUTTS,
Attorneys for Plaintiff, Quaker City National Bank.

In United States Circuit Court, Northern District of Texas, at Dallas, Texas.

QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY.

Now comes Quaker City National Bank, plaintiff in above-entitled cause, by Williams & Butts, its attorneys, and Nolan County, defendant, by its attorneys, Leake, Henry, Miller & Reeves and Cowan & Fisher, and as a supplement to the agreed statement of facts heretofore made, agree for the purpose of a trial of said cause to the following additional facts, to wit:

On August 2nd, 1881, the county commissioners' court of
43 Nolan County (defendant), at a special session of said court, examined and approved the assessment-rolls of Nolan county for the taxes for the year 1881.

On August 14th, 1882, the county commissioners' court of Nolan county, at a regular term, examined and approved the assessment-rolls of Nolan county for the taxes for the year 1882.

On October 11th, 1883, the county commissioners' court of Nolan county, at a special session, examined and approved the assessment-rolls of Nolan county for the taxes of the year 1883.

LEAKE, HENRY, MILLER & REEVES,
COWAN & FISHER,
Attorneys for Defendant, Nolan County.
WILLIAMS & BUTTS,
Attorneys for Plaintiff, Quaker City National Bank.

3rd. Article 11, section 7 of the constitution of the State of Texas says: "But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent. as a sinking fund."

4th. The act of February the 11th, 1881, is as follows:

"SEC. 1. Be it enacted by the legislature of the State of Texas, That the county commissioners' court of any county which has no court-house at the county-seat is hereby authorized and empowered to issue the bonds of said county, with interest coupons attached, in such amount as may be necessary to erect a suitable building for a court-house; said bonds running not exceeding fifteen
44 years and redeemable at the pleasure of the county, and bearing interest at a rate not exceeding eight per cent. per annum.

"SEC. 2. The commissioners' court of the county shall levy an annual ad valorem tax on the property in said county sufficient to pay the interest and create a sinking fund for the redemption of said bonds, not to exceed one-fourth of one per cent. for any one year.

"SEC. 3. The county shall not issue a larger number of bonds than a tax of one-fourth of one per cent. annually will liquidate in

ten years, and such bonds shall be sold only at their face or par value.

"SEC. 4. The interest on said bonds shall be paid annually on the 10th day of April, and they shall be registered and an account kept by the county treasurer of the amount of principal and interest paid on each.

"SEC. 5. Said bonds shall be signed by the county judge and countersigned by the county clerk and registered by the county treasurer before they are delivered."

General Laws of 1881, pp. 5 and 6.

5th. Article 8, section 9 of the State constitution, as amended in 1883, limits the expenditures of a county for public buildings to 25c. on the $100.00.

6th. The supreme court of Texas in the case of The Citizens' Bank *vs.* The City of Terrell, 78 Tex. Rep., 456, '7, says:

"While our constitution authorizes the creation of a debt and the issuance of its negotiable bonds by the defendant city to provide for constructing water works, its mandate is imperative that no such debt shall be created without making provision at the time of its creation to assess and collect annually a sufficient sum to pay
45 the interest thereon and create a sinking fund of at least two per cent. on the principal. Until that is done the debt is not created and none exists."

In the case the following language occurs, on page 456: "But where authority to create a debt at all, or beyond a given amount, is made to depend upon evidence furnished by official records, the same rule in regard to recitals contained in bonds given for the debt should not be applied. Every holder of such bonds is charged with a knowledge of the provisions of the law relating to their issuance, and if the law points to the records as evidence of the existence of the facts required to authorize their issuance, or to limit the amount of the debt the city may create, such records and not the recitals in the bonds must be looked to by every one who proposes to deal in the bonds."

The following cases are to the same effect: Dixon County *vs.* Field, *Ill.* U. S., p. 84; Lane County *vs.* Graham, 130 U. S., p. 682; Nolan County *vs.* The State, 83 Tex., 183; Francis *vs.* Howard County, 54 Fed. Rep., 487, 50 Fed. Rep., p. 60.

7th. The question that presents itself at the thresh*h*old in the case at bar, is, whether any one of the different series of bonds sued on was valid, under art. 11, sec. 7 of the constitution of Texas, when issued and delivered.

The commissioners' court of Nolan county in the years 1881, 1882, 1883, 1884, and 1885 levied and collected a tax of one-fourth of one per cent. on the assessed values of said county for court-house purposes, and a tax of one-fourth of one per cent. for jail purposes, but no provision has been shown by said court at the time these bonds were issued and delivered to assess and collect
46 annually a sufficient sum to pay the interest and create a sinking fund of at least two per cent. on the principal.

In Nolan County *vs.* The State, 83 Tex., 189, bonds of the same series with those now under consideration were before the supreme court of Texas and were passed upon by that high tribunal. The agreed statements of facts were substantially the same in that case as in this. The court found that bonds 28, 29, and 30 were valid. Those numbered 10, 11, 12, 13, and 14, being of the series of court-house bonds from one to twenty, were invalid, and those numbered 1, 2, 3, and 4 issued to Martin, Byrne & Johnson of which 6, 7, and 8 now sued on are of the same series, were good in part. The court also found that 24, 25, and 26, sued on in the case at bar, were each valid. Bonds 1, 2, 3, and 4 of the bonds sued on, are of the series of court-house bonds which said court declared to be invalid, from 1 to 20. See pp. 198 and 199 of said case.

The court in the above case seems to have passed upon the validity of said bonds under the assessment and tax rules of Nolan county at the date said bonds were issued. The question of making provision at the date of the issuance of those bonds, to assess and collect annually a sufficient sum to pay the interest thereon and provide at least two per cent. sinking fund, it seems, was not called to the attention of the court by the counsel in the case, so far as appears by the reported decision. Neither the pleadings or briefs of the able counsel in the case raise this question; indeed, this provision of the constitution is only referred to once and then incidentally by the court. See p. 200.

The bonds themselves, from which the coupons sued on in this case were detached, were not involved in the Nolan county
47 case further than they were of the same series with the bonds from which the coupons sued on were detached. We are of the opinion that none of the bonds from which the coupons sued on in this case were detached were valid on account of the failure to comply with said constitutional provision at the date of the issuance of said bonds.

8th. Plaintiff in this case in his supplemental petition says: "That if for any reason its said bonds were invalid when issued by defendant county, that the same have been validated and made legal and binding obligations of defendant by the act of the legislature of the State of Texas, approved May 25th, 1885, validating bonds bought by the State school fund; that the State of Texas owned a portion of each series of bonds issued by defendant county, and that plaintiff also owns, and here sues upon a portion of each series of bonds issued by defendant, that the issuance of each series of bonds by defendant county was one act and that the legislature could only validate the bonds, or any of them, by validating the act of the commissioners' court by which said bonds were issued. That by validating the bonds of defendant county owned by the State of Texas the legislature of the State of Texas, by the act aforesaid, also validated plaintiff's bonds and made them legal and binding obligations of defendant county."

Sections 3 and 4 of the act of March 24th, 1885, General Laws of Texas, p. 41, are as follows:

"SEC. 3. In all cases where the proceeds of the sale of any bonds have been received by the proper officers of the county or by a party acting for it in negotiating the sale thereof, such county shall be thereafter estopped from denying the validity of such
48 bonds so issued and the same shall be held to be valid and binding obligations of the county, and in any action upon such bonds or coupons thereto, judgment shall be rendered against the county for the amount of the bonds sued on and interest thereon at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon.

"SEC. 4. The payment of any interest upon any bonds heretofore purchased or that may hereafter be purchased, with public school funds, or belonging thereto shall be deemed and held a waiver of any supposed error, irregularity or want of authority affecting, or tending to affect, the validity of any such bonds, and the same shall thereafter be valid and binding obligations upon the county by which they appear or purport to have been issued, notwithstanding any such supposed error, irregularity or want of authority, as aforesaid."

If the power of the legislature to validate the bonds in question be conceded, then it would seem that the coupons involved in this case would be validated under section 3 of the act of March 24th, 1885, above set out. For the plaintiff has alleged and proved that the county of Nolan got the proceeds of said bonds and used them, some in constructing a jail and some in constructing a court-house. We do not think that section 4 of said act of March 24th, 1885, relates to or intended to validate the bonds now in controversy. That section relates to bonds purchased with the school fund, and the fact that some of the bonds now in controversy (by reason of this suit on coupons detached therefrom) were of the same series and issue with some other bonds purchased by the school fund, would not validate the bonds involved in this case. Could the
49 legislature validate any of the bonds involved in this suit?

If at the date of their issuance it had no power to release the counties of Texas from a compliance with the provisions of art. XI, section 7 of the State constitution of Texas, it still has no power by retroactive legislation to validate bonds issued in violation of said section; that section is still in the constitution and in force. Cooly on Con. Limitations, p. 457; Sutherland on Statute Construction, section 483; Katzenberger *vs.* Aberdeen, 121 U. S., p. 172, 68 Tex., 230.

Let judgment be entered for the defendant.

JOHN B. RECTOR, *Judge.*

The foregoing has the following endorsement, to wit:

1487. Quaker City National Bank *vs.* Nolan County. Opinion of the court. Filed January 31, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Judgment.

From the minutes of the circuit court of United States for the northern district of Texas, January term, A. D. 1894.

THE QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY. } No. 1487.

JANUARY 31, 1894.

On this day this cause was regularly called for trial and came the parties, plaintiff and defendant, by their respective attorneys, and announced ready, and a jury being waived by an agreement in writing filed herein, the issues of fact as well as of law are submitted to the court, and the court having heard the pleadings, evidence and argument of counsel and fully considered the same, is of the opinion that the law is for the defendant and that the plaintiff is not entitled to recover therein.

50 It is therefore ordered, adjudged and decreed by the court that the plaintiff, The Quaker City National Bank, take nothing by its action herein, and that the defendant, Nolan County, go hence without day and have and recover of and from the said plaintiff all costs by it herein incurred and expended and for which execution may issue.

It is further ordered that the officers of court do have and recover of and from each party hereto the costs by them, respectively, incurred, for which also may execution issue.

Order Extending Time to File Bill of Exceptions.

QUAKER CITY NATIONAL BANK
vs.
NOLAN COUNTY. } 1487.

FEBRUARY 28, 1894.

Ordered by the court that the plaintiff be, and it is hereby, allowed until March 10th, 1894, within which time to prepare, submit and file its bill of exceptions herein.

Assignment of Errors. Filed April 3rd, 1894.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE QUAKER CITY NATIONAL BANK,
Plaintiff in Error,
vs.
NOLAN COUNTY, Defendant in Error. } Assignment of Errors.

Now comes The Quaker City National Bank, plaintiff in error in the above-stated cause, by its attorneys, and, referring to its application for a writ of error herewith filed, says that the record and proceedings in the said cause show manifest error in the judgment of the court below in this, to wit:

1. The bonds from which the coupons were clipped recited
51 on their face that they were "issued in pursuance of" and "in accordance with the provisions of" the enabling act, reciting its caption and giving the date of its approval; and such recitations were equivalent to a direct and specific recital, or statement, made on the face of the bonds, that each and every condition annexed to the power to issue them had been complied with by those whose duty it was made to issue them, and that every fact made necessary to their validity by the enabling act existed when they were issued by the defendant in error, Nolan County, and plaintiff in error being a *bona fide* purchaser and holder of the bonds, defendant in error was estopped to deny the truth of such recitals, and the court erred in not so holding, as appears from plaintiff in error's bill of exception, paragraph 1.

2. The constitution of the State of Texas neither limits the issuance of court-house bonds by counties, nor imposes any conditions whatever on the issuance of such bonds, and the court erred in holding to the contrary, as shown in bill of exceptions, paragraph 2.

3. If the constitution of the State of Texas does, in fact, impose any conditions, restrictions or limitations upon the issuance of court-house bonds by counties, the enabling act, under which the bonds in suit were issued, imposed more onerous conditions, restrictions and limitations than the constitution, and it would have been impossible to issue the bonds in compliance with the conditions and restrictions imposed by the enabling act, and within the limits prescribed by it, without complying with every condition imposed by the constitution, and without bringing them within the constitutional limit; the recitals made on the face of the bonds that they were "issued in pursuance of" and "in accordance with the
52 provisions of" the enabling act necessarily imported that every constitutional requirement had been met by those whose duty it was to issue the bonds; and the defendant in error, Nolan County, was estopped as against plaintiff in error, to deny that the said bonds, or any of them, were issued in compliance with the conditions imposed by the constitution, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 3.

4. If the constitution of the State of Texas does, in fact, impose any conditions, restrictions or limitations on the issuance of court-house bonds by counties, the facts upon which the said cause was tried in the court below show that the bonds in suit were issued in compliance with the conditions imposed by the constitution, and that every demand and command of the constitution had been met and complied with by those whose duty it was made to issue the bonds—and who, in fact, issued them—and the court below erred in not so holding, as shown in bill of exceptions, paragraph 4.

5. If the constitution of the State of Texas does, in fact, prescribe any limit to the issuance of court-house bonds by counties, or imposes any conditions precedent to their issuance, it prescribes no rule of evidence to determine whether the bonds issued come within the limit, or whether the conditions imposed have been

complied with, and neither creates or designates any tribunal or officer to determine these facts, or any of them, but leaves the whole matter to be regulated by the legislature. The enabling act under which the bonds in suit were issued conferred upon the county commissioners' court of the respective counties exclusive power and authority to decide whether the bonds had been duly and lawfully issued; the county commissioners' court of defendant in
53 error, acting by and through its presiding officer and clerk, have certified on the face of the bonds that they were duly and lawfully issued, and that every requirement of the law had been met and complied with, and the defendant in error is estopped, as against plaintiff in error, to deny the truth of such recital, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 5.

6. The bonds in suit did not exceed the amount that defendant in error was authorized to issue under the enabling act or the constitution; it does not appear from the record that plaintiff in error had notice of the issuance of other court-house bonds by defendant in error when it purchased the bonds in suit; and the facts upon which the cause was tried by the court below show that every condition imposed by the enabling act and the constitution was complied with by those whose duty it was made to issue the bonds, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 6.

7. The facts upon which the cause was tried in the court below show that at the time the bonds in suit were issued, provision was made for levying and collecting a sufficient tax to pay the interest thereon and provide a sinking fund for their redemption at maturity, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 7.

8. If there were any defects, irregularities or infirmities in the issuance of the bonds in suit, or any of them, or if they were issued in excess of the limit prescribed by the enabling act, the defendant in error, by levying and collecting taxes to pay the interest thereon for five years, and by paying the interest thereon for that length of time, has ratified and confirmed the action of the county com-
54 missioners' court in issuing them, and is estopped as against plaintiff in error to deny that they were issued in compliance with the conditions imposed by the enabling act and the court below erred in not so holding, as shown by bill of exception, paragraph 8.

9. If the bonds in suit were, in fact, issued in excess of the limit prescribed by the enabling act, and if no provision was made at the time they were issued for the payment of the interest thereon and to provide a sinking fund for their redemption at maturity, they were validated and made binding obligations of defendant in error by the act of the legislature of the State of Texas, entitled "An act relating to and regulating the investment of the permanent public free school and other funds, to guard against loss of such funds in making investments thereof and to provide further evidence of the validity of bonds and securities purchased therewith, making the

certificate of the attorney general or other specific acts evidence of the validity of such bonds or securities, and to fix the jurisdiction and venue of suits thereon," approved March 24th, 1885, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 9.

10. The decision- of the supreme court of Texas holding that the constitution of Texas restricts, limits and imposes conditions upon the issuance of court-house bonds by counties were not rendered until after the bonds in suit had been issued and sold by defendant in error, and until after plaintiff in error had purchased them, and such decisions are not binding on the Federal courts, and the court below erred in holding such decisions binding on it, as shown by bill of exceptions, paragraph 10.

11. The county commissioners' court of defendant in error,
55 Nolan County, by which the bonds in suit were issued, was a court created by the constitution of the State of Texas, and by the constitution given exclusive jurisdiction over all the business and finances of the defendant in error and no other court has power to review, set aside or annul its judgments, decrees or orders; the finding by that court, certified on the face of the bonds that the conditions existed which authorized the issuance of the bonds in suit, that they were issued in "pursuance of law," and that they were not issued in excess of the power conferred, is a judgment of a court of competent and exclusive jurisdiction over the matter upon which it passed, and is binding on defendant in error, and cannot be attacked in a collateral way in this suit, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 11.

12. Neither the constitution nor the enabling act creates or designates any tribunal or officer other than the county commissioners' court to determine whether the conditions imposed upon counties issuing bonds have been complied with, or whether the amount of bonds issued is within the limits prescribed; and the finding of the county commissioners' court certified on the face of the bonds is conclusive and binding on defendant in error, as against a *bona fide* holder, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 12.

13. The defendant in error, Nolan County, having issued the bonds and sold them in the money market of the country, and received the proceeds thereof and applied the same to a legitimate corporate purpose—a purpose for which it was authorized to issue them—and plaintiff in error being a *bona fide* purchaser and holder of the bonds, it was entitled to a judgment for the full amount
56 of the coupons sued upon, with interest thereon, from maturity, at the rate of eight per centum per annum, and the court below erred in not so holding, as shown by bill of exceptions, paragraph 13.

14. The court below erred in its conclusion of law in holding:

(*a*) That the constitution of the State of Texas, in force when the bonds in suit were issued, either limited, restricted or imposed any conditions upon the issuance of court-house bonds by counties, as shown by bill of exceptions, paragraph 14, subdivision *a*.

(*b*) That the defendant in error was not estopped by the recitals on the face of the bonds, as shown by bill of exceptions, paragraph 15, subdivision *b*.

(*c*) That the county commissioners' court of defendant in error was not the proper tribunal to determine whether the conditions required by law had been complied with, and that the amount of bonds issued was not in excess of the limit prescribed by law, as shows by bill of exceptions, paragraph 14, subdivision *c*.

(*d*) That the defendant in error was not estopped to deny the validity of the bonds by reason of having levied and collected taxes for five years to pay the interest on the bonds, and having paid the interest thereon for that length of time, as shown by bill of exceptions, paragraph 14, subdivision *d*.

(*e*) That the bonds in suit were not validated and made binding obligations of the defendant in error by the validating act of the legislature of the State of Texas, approved March 24th, 1885, as shown by the bill of exceptions, paragraph 14, subdivision *e*.

(*f*) That the Federal courts were bound by the decisions of the supreme court of the State of Texas (rendered after the bonds in suit were issued and sold, and after plaintiff in error had pur-
57 chased them), construing the constitution of the State of Texas to limit, restrict and impose conditions upon the issuance of court-house bonds by counties, as shown by bill of exceptions, paragraph 14, subdivision *f*.

(*g*) That the county commissioners' court of defendant in error was not a court of competent and exclusive jurisdiction to determine whether the bonds had been duly and legally issued, and whether or not the amount issued was within the limit prescribed, and the defendant in error was bound and precluded by its finding on these questions, as shown by bill of exceptions, paragraph 14, subdivision *g*.

15. The judgment of the court below is contrary to and not supported by the law and the facts upon which the cause was tried, as shown by bill of exceptions, paragraph 15.

Wherefore, the said plaintiff in error, The Quaker City National Bank, prays that the judgment of the United States circuit court for the northern district of Texas be reversed and the cause remanded for a new trial.

WILLIAMS & WILLIAMS AND
JOHN J. BUTTS,
Attorneys for The Quaker City National Bank,
Plaintiff Below and Plaintiff in Error.

The foregoing has the following endorsement, to wit:

In United States circuit court of appeals, fifth circuit. The Quaker City National Bank, plaintiff in error, *vs.* Nolan County, defendant in error. No. 1487. Assignment of errors by plaintiff in error. Filed April 3rd, 1894. J. H. Finks, clerk, by Chas. A. Boynton, deputy.

58 United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1894.

WEDNESDAY, *November* 28, 1894.

(Extract from minutes.)

THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,
v.
NOLAN COUNTY, Defendant in Error.

This cause was regularly called this day and after argument by John J. Butts, Esq., for the plaintiff in error, was submitted to the court upon briefs of both parties heretofore filed.

United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1894.

TUESDAY, *December* 11, 1894.

(Extract from minutes.)

THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,
v.
NOLAN COUNTY, Defendant in Error.

59 This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Texas and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed.

It is further adjudged that the plaintiff in error, The Quaker City National Bank, and the sureties on the writ of error bond herein, M. B. Loyd and J. J. Butts, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

60 *Opinion.*

(Filed December 11, 1894.)

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1894.

THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,
v.
NOLAN COUNTY, Defendant in Error. } No. 234.

Error to the United States circuit court for the northern district of Texas.

Before Pardee and McCormick, circuit judges, and Bruce, district judge.

MCCORMICK, circuit judge, delivered the opinion of the court:

61 The questions involved in this case are not open questions in this court. On reasoning which we have approved and

still consider sound and sufficient, both of the vital propositions submitted have been decided by the supreme court of Texas adversely to the contention of the plaintiff in error. Citizens' Bank *v.* City of Terrell, 78 Texas, 456; Nolan County *v.* State of Texas, 83 Texas, 183; Francis *v.* Howard County, 4 C. C. A., 460; Millsaps *v.* City of Terrell, 8 C. C. A., 554.

We have read with care and interest the learned and able brief submitted for the plaintiff in error, but are unwilling to open the questions which we have settled on full argument of counsel and careful consideration by the court.

The judgment of the circuit court is affirmed.

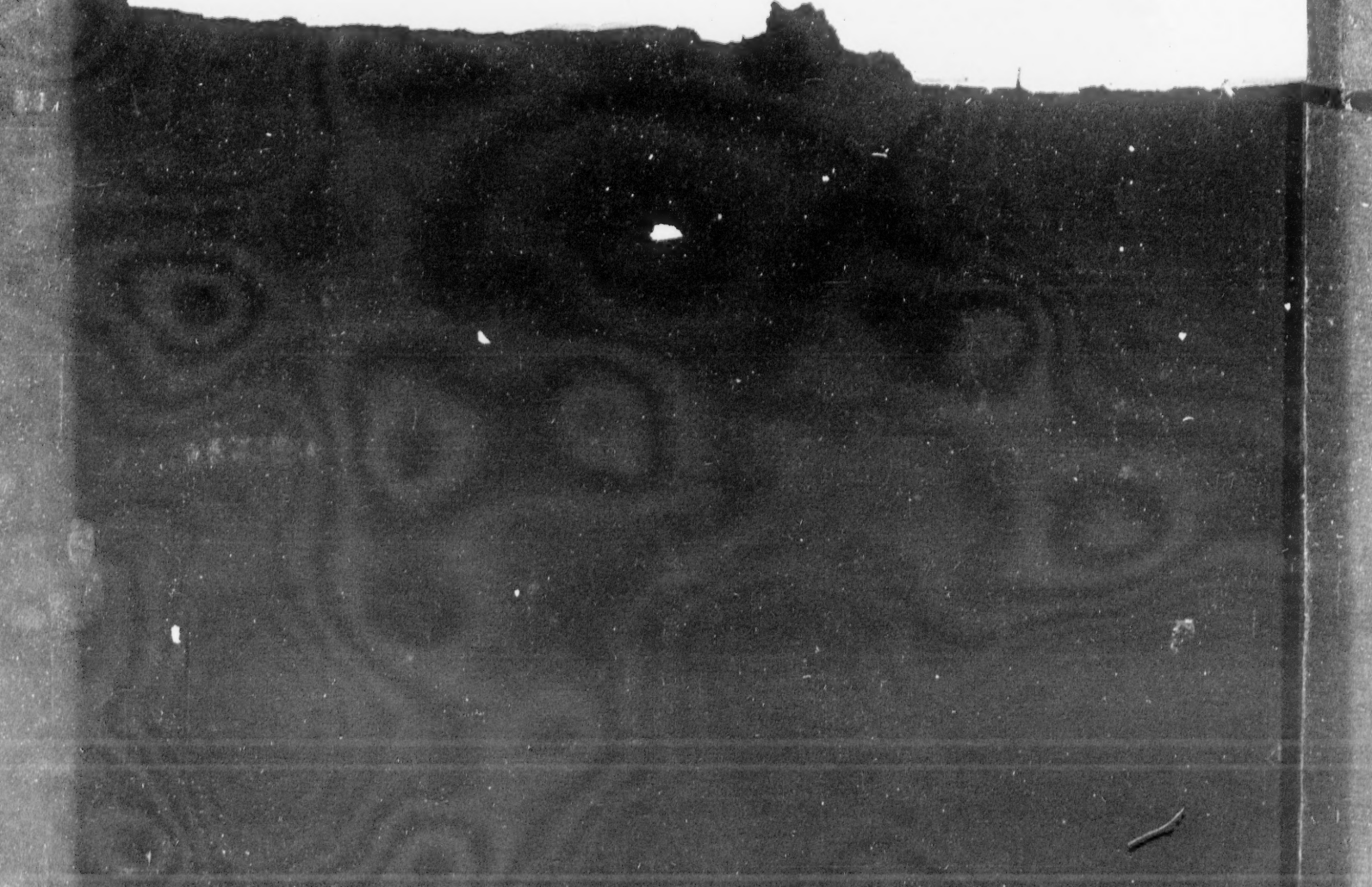
62 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1894.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 61 pages contain a true and correct transcript of the proceedings had in said United States circuit court of appeals in the cause of The Quaker City National Bank, plaintiff in error, *v.* Nolan County, defendant in error, No. 234, and of so much of the transcript of the record of said cause from the United States circuit court for the northern district of Texas as was printed and used on the hearing and decision of said cause in said United States circuit court of appeals for the fifth circuit as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this — day of December, A. D. 1895.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.



Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 825.

THE QUAKER CITY NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

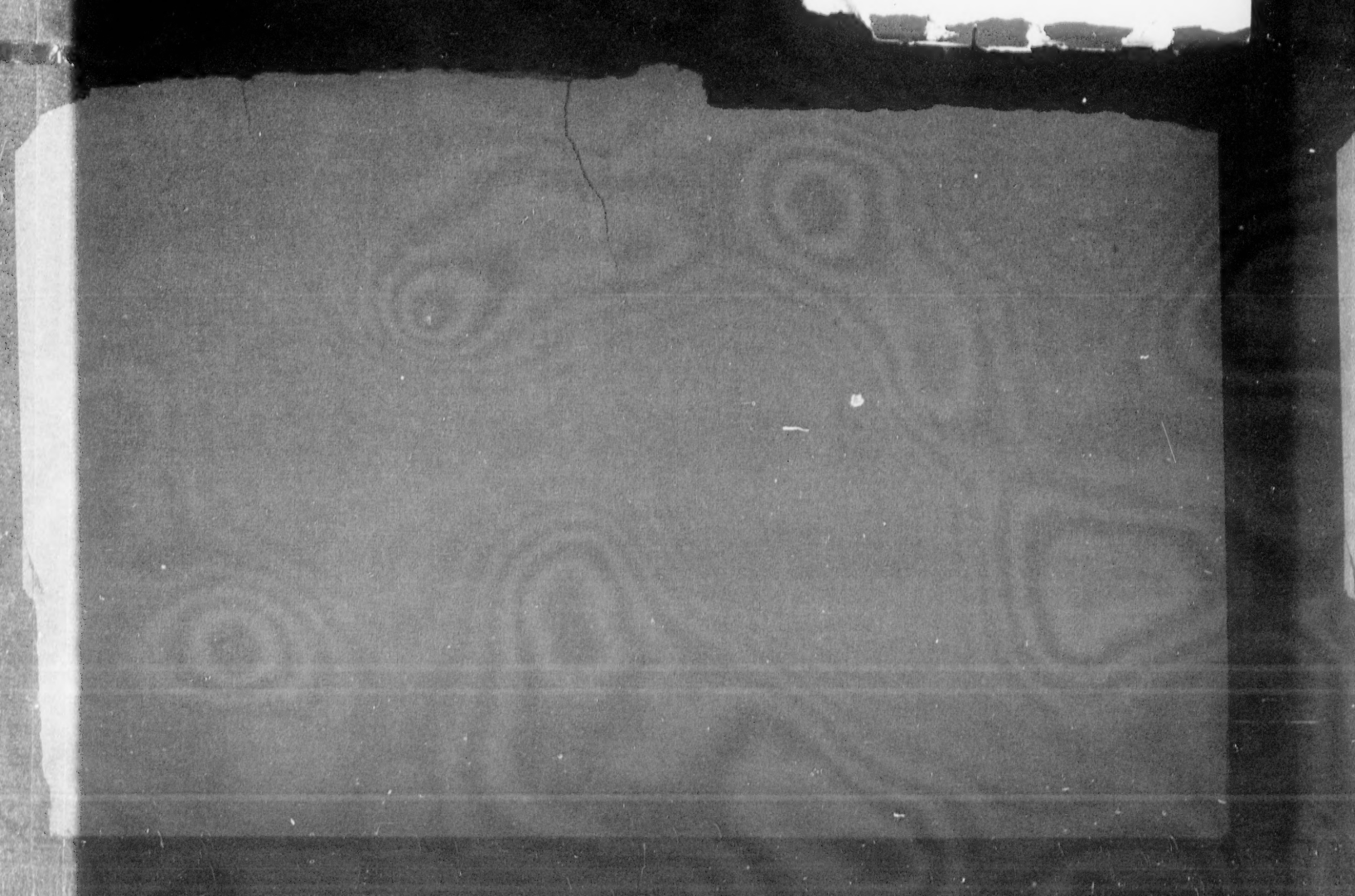
NOLAN COUNTY.

PETITION OF PLAINTIFF IN ERROR FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JOHN J. BUTTS,
Counsel for Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

(16,115.)



IN THE

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 825.

THE QUAKER CITY NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

NOLAN COUNTY.

PETITION OF PLAINTIFF IN ERROR FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Supreme Court of the United States:

The petition of the Quaker City National Bank for a writ of *certiorari* to the judges of the United States circuit court of appeals for the fifth circuit, to bring before the Supreme Court of the United States a certain action at law wherein it is plaintiff against Nolan county, respectfully shows:

First. That on the 2d day of April, 1891, petitioner instituted an action at law against Nolan County in the circuit court of the United States for the northern district of Texas to recover $5,280 due on 66 interest coupons, said coupons representing installments of interest due on 11 negotiable

coupon bonds made, executed, issued, and sold by said Nolan county.

Second. The cause was tried by the circuit court on an agreed statement of facts without the intervention of a jury.

Third. It was admitted in the facts agreed to—

(1.) That the bonds in suit were issued in pursuance of orders of the county commissioners' court of said Nolan county, which said orders were duly entered upon the minutes of said court.

(2.) That each and every of said bonds were signed by the county judge and county clerk and treasurer of said Nolan county, and had the seal of the county commissioners' court of said county affixed thereto.

(3.) That three of said bonds contained, *inter alia*, the following recital: "This bond is issued in accordance with the provisions of an act of the legislature of the State of Texas entitled 'An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house and to levy a tax to pay for same,'" giving date of approval, and that the other bonds involved contained, *inter alia*, the following recital: "That in pursuance of an act of the legislature of the State of Texas entitled 'An act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house and to levy a tax to pay for same,' approved February 11, 1881, and in further pursuance of an order of the county commissioners' court of Nolan county aforesaid, entered upon the records thereof, * * * authorizing the issue of said bonds, with interest coupon attached, for the purpose of building a court-house in said county: * * *

"Now, therefore, The County of Nolan, in the State of

Texas, acknowledges itself indebted and promises to pay," &c., &c.

(4.) That the petitioner purchased said bonds on the 5th day of December, 1885, and that it was a *bona fide* purchaser and holder thereof.

Fourth. As a bar of the action, Nolan county pleaded—

(1.) Issue in excess of the limit prescribed by the constitution of Texas and the enabling act.

(2.) That at the time the bonds were issued no provision was made for levying and collecting a tax to pay the interest and provide a sinking fund of 2 per centum for the ultimate redemption of the bonds.

Fifth. To the aforesaid defenses set up by Nolan county the petitioner pleaded estoppel by reason of the recitals contained on the face of the bonds.

Sixth. On the authority of The Citizens' Bank *vs.* The City of Terrell, 78 Texas Rep., 456; Dixon County *vs.* Field, 111 U. S., 84; Lake County *vs.* Graham, 130 U. S., 682; Nolan County *vs.* The State, 83 Texas, p. 183; Francis *vs.* Howard County, 54th Fed. Rep., 487, and same case, 50 Fed. Rep., p. 60, the circuit judge held the bonds void because of the fact that at the time they were issued no provision was made for levying and collecting the tax to pay the interest on the bonds and to provide a sinking fund of 2 per centum, required by article 11, section 7, of the constitution of the State of Texas. In the opinion given the circuit court said:

"We are of the opinion that none of the bonds from which the coupons sued upon in this case were detached were valid, on account of the failure to comply with said constitutional provisions at the date of the issuance of the bonds."

See record.

The following is a copy of the article of the constitution referred to by the learned judge:

"SECTION 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized, upon a vote of two-thirds of the tax-payers therein (to be ascertained as may be provided by law) to levy and collect such tax for the construction of sea walls breakwaters or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county, unless provision is made at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provided at least two (2) per cent. as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for."

Seventh. From this judgment the petitioner duly prosecuted a writ of error to the United States circuit court of appeals for the fifth circuit, which on December 11, 1894, affirmed the judgment of the circuit court, with cost.

That no mandate has been issued by the said United States circuit court of appeals to the said circuit court.

Eighth. That in said United States circuit court of appeals the following errors, among others, were assigned to the judgment of the circuit court:

(1.) The bonds from which the coupons were clipped recite upon their face that they were "issued in pursuance of" and "in accordance with the provisions of" the enabling act, reciting its caption and giving the date of its approval, and such recitals were equivalent to a direct and specific recital or statement made on the face of the bonds that each and every condition annexed to the power to issue them had been complied with by those whose duty it was made to issue them, and that every fact made necessary to their validity by the enabling act existed when they were

issued by the defendant in error, Nolan County; and plaintiff in error being a *bona fide* purchaser and holder of the bonds, defendant in error was estopped to deny the truth of such recitals, and the court erred in not so holding.

(2.) The constitution of Texas neither limits the issuance of court-house bonds nor imposes any condition whatever upon the issuance of such bonds, and the court erred in holding to the contrary.

(3.) If the constitution of the State of Texas does in fact impose any conditions, restrictions, or limitations upon the issuance of court-house bonds by counties, the enabling act, under which the bonds in suit were issued, imposed more onerous conditions, restrictions, and limitations than the constitution, and it would have been impossible to issue the bonds in compliance with the conditions imposed by the enabling act, and within the limits prescribed by it, without bringing them within the constitutional limits. The recitals made on the face of the bonds that they were "issued in pursuance of" and "in accordance with the provisions of" the enabling act necessarily imported that every constitutional requirement had been met by those whose duty it was to issue the bonds, and the defendant in error, Nolan County, was estopped as against plaintiff in error to deny that the said bonds or any of them were issued in compliance with the conditions imposed by the constitution, and the court below erred in not so holding.

(4.) If the constitution of the State of Texas does, in fact, impose any conditions, restrictions, or limitations on the issuance of court-house bonds by counties, the facts upon which the said cause was tried below show that the bonds in suit were issued in compliance with the conditions imposed by the constitution, and that every demand and command of the constitution had been met and complied with

by those whose duty it was made to issue the bonds, and n
who, in fact, issued them.

(5.) If the constitution of the State of Texas does, in fact, n
prescribe any limit to the issuance of court-house bonds by
counties or impose any conditions precedent to their issu-
ance, it prescribed no rule of evidence to determine whether
the bonds issued come within the limit or whether the con-
ditions imposed have been complied with, and neither cre-
ates nor designates any tribunal or officer to determine these
facts or any of them, but leaves the whole matter to be regu-
lated by the legislature. The enabling act under which the
bonds in suit were issued conferred upon the county com-
missioners' court of the respective counties exclusive power
and authority to decide whether the bonds had been duly
and lawfully issued. The county commissioners' court of
defendant in error, acting by and through its presiding
officer and clerk, have certified on the face of the bonds that
they were duly and lawfully issued, and that every require-
ment of the law had been met and complied with, and the
defendant in error is estopped, as against plaintiff in error,
to deny the truth of such recitals, and the court below erred
in not so holding.

(6.) The decisions of the supreme court of Texas, holding
that the constitution of Texas restricts, limits, and imposes
conditions upon the issuance of court-house bonds by counties,
were not rendered until after the bonds in suit had been
issued and sold by defendant in error and until after plain-
tiff in error had purchased them, and such decisions are not
binding on the Federal courts, and the court below erred in
holding such decisions binding upon it.

(7.) The county commissioners' court of defendant in
error, Nolan County, by which the bonds in suit were issued,
was a court created by the constitution of the State of Texas,
and by the constitution given exclusive jurisdiction over all

the business and finances of the defendant in error, and no other court has power to review, set aside, or annul its judgments, decrees, or orders. The findings by that court, certified on the face of the bonds, that the conditions existed which authorized the issuance of the bonds in suit, that they were issued in "pursuance of law," and that they were not issued in excess of the power conferred is a judgment of a court of competent and exclusive jurisdiction over the matter upon which it passed, and is binding on defendant in error and cannot be attacked in a collateral way in this suit, and the court below erred in not so holding.

(8.) Neither the constitution nor the enabling act creates or designates any tribunal or officer, other than the county commissioners' court, to determine whether the conditions imposed upon counties issuing bonds have been complied with, or whether the amount of bonds issued is within the limits prescribed, and the finding of the county commissioners' court, certified on the face of the bonds, is conclusive and binding on defendant in error as against a *bona fide* holder, and the court below erred in not so holding.

Each and every of which said assignments of error were predicated upon bills of exceptions duly presented to and allowed by the circuit court and urged in the United States circuit court of appeals.

Ninth. In the opinion given by the United States circuit court of appeals affirming the judgment of the circuit court the following cases are cited and relied upon as authorities upon the question involved: Citizens' National Bank *vs.* Terrell, 78 Texas, 456; Nolan County *vs.* The State, 83 Texas, 183; Francis *vs.* Howard County, 4 C. C. A., 460; Millsaps *vs.* City of Terrell, 8 C. C. A., 554.

Tenth. The supreme court of Texas has never yet held, in a case where it is necessary to determine the issues in-

volved, that article 11, section 7, of the constitution of Texas had any reference to or imposed any conditions upon the issuance of court-house bonds. The case of The State of Texas *vs.* Nolan County was decided upon the sole proposition that the amount of bonds issued exceeded the amount authorized by the enabling act as construed in connection with section 9 of article 8 of the constitution of Texas.

In the case of Citizens' National Bank *vs.* Terrell, 78 Texas, 450, what was said by the court in reference to section 7, article 11, of the constitution of Texas was *obiter dicta* and unnecessary to the decision of the question involved, as there was another section of the constitution bearing directly on the question, viz., section 5, article 11.

In that case the bonds were held void on the sole ground that the officers who issued them had not complied with the law. There was no question of estoppel by recitals on the face of the bonds.

Eleventh. In the case of Robinson *vs.* Breedlove, 61 Texas, 320, decided in 1884, and in Waxahachie *vs.* Brown, 61 Texas, 591, it is in effect held that section 7 of article 11 of the constitution of Texas has no reference whatever to any character of bonds except those especially mentioned therein. The case of Robinson *vs.* Breedlove was decided before petitioner purchased the bonds in suit.

Twelfth. In the cases of *Ex parte* Towels, 48 Texas, p. 428; *Ex parte* Whitlow, 59 Texas, 274; Austin *vs.* G., C. & S. F. R. R. Company, 45 Texas, 269; Anderson County *vs.* H. & G. N. R. R. Company, 52 Texas, 241; Cresswell Land & Ranch Company *vs.* Roberts Co., 27 S. W. Rep., 73, the supreme court of Texas held that the county commissioners' court, being a court created by the constitution and having its jurisdictions conferred upon it by the constitution, was a court of general jurisdiction in all matters of which it has cognizance, and that its judgments are final and conclusive;

that they cannot be reviewed, set aside, or annulled by any other court, and that its judgments are not subject to collateral attack; and in the case of Austin *vs.* G., C. & S. F. R. R. Co., *supra*, it was held that the action of the county commissioners' court in determining whether the prerequisite conditions to the issuance of bonds had been complied with was a judicial proceeding, and that its judgment and conclusion could not be impeached in a collateral proceeding.

Thirteenth. The case of The Citizens' Bank *vs.* Terrell, 78 Texas, 456; Nolan County *vs.* The State, 83 Texas, 183; Francis *vs.* Howard County *vs.* The State, 4 C. C. A., 460; Millsaps *vs.* The City of Terrell, 8 C. C. A., 554, and the opinion of the circuit court of appeals in this case, all hold that a municipal corporation is not estopped by the recitals made on the face of negotiable bonds when issued and executed by the officers designated by law and when held by a *bona fide* purchaser, notwithstanding neither the constitution nor the enabling act had created or designated any other officer or tribunal to determine whether the facts existed which authorized the issuance of the bonds or whether the conditions precedent imposed by law had been complied with, and notwithstanding neither the constitution nor the enabling act had created any rule of evidence to determine these facts and had referred the purchaser to no source of information for evidence of these facts.

Fourteenth. In the case of Francis *vs.* Howard County, 4 C. C. A., 554, decided by the United States circuit court of appeals for fifth circuit and cited as an authority in this case, it is held that recitals made on the face of municipal bonds, such as appear upon the face of the bonds involved in this suit, are recitals of conclusions of law and not of conclusions of fact. While it is not so stated in the opinion of the court in this case, the conclusions reached in Francis

vs. Howard County must have been adhered to, as it is cited as an authority in point, and, besides, a different judgment must have been given had different conclusions on the question have been reached by the court.

Fifteenth. In the case of Knox County *vs.* Aspinwall, 21 How., 544, and in many cases since decided, this Court held that recitals such as appear upon the face of the bonds involved in this case were recitals of matters *in pais* and were equivalent to a direct and specific recital or statement made on the face of the bonds that each and every condition precedent had been complied with by those whose duty it was made to issue the bonds, except in cases where the enabling act or the constitution had prescribed a different rule of evidence to determine these facts. The rule announced in that case has been uniformly adhered to by this Court in all cases decided by it where the question was involved, and was approved and followed as late as the case of Bernard's Township *vs.* Morrison, 133 U. S., 523.

Sixteenth. That it may appear and be made manifest to this Court that the circuit court of appeals erred in holding that the enabling act charged your petitioner with notice of the assessed values of taxable property of said Nolan county, as shown by the official assessment-rolls thereof, and that its judgment in this respect is in conflict with and attempts to overrule the previous judgments of this Court on the question, so much of the enabling act as bears upon the question is here copied:

"SECTION 3. The county shall not issue a larger amount of bonds than a tax of one-fourth of one per centum annually will liquidate in ten years." * * *

Seventeenth. The United States circuit court of appeals, in effect, held that it was bound by the decisions of the supreme court of Texas, given long after the bonds had been issued

and after they had been purchased by your petitioner, construing the constitution of Texas and the enabling act.

Eighteenth. In the case of Knox County *vs.* Ninth National Bank, 147 U. S., 91, and in numerous other cases decided by this Court, it was held that the Federal courts were not bound by the decisions of the State court construing the statutes or a constitution of a State, where such decisions were not given until after the bonds had been issued and until after the rights of the purchaser had become fixed.

Nineteenth. Your petitioner avers that this case is one in which it is proper for this Court to issue a writ of *certiorari* for the following reasons:

1st. The question involved is one of great importance, there being, according to the best information of your petitioner, over $300,000 of bonds issued by different counties and municipalities of Texas, now held by non-resident innocent purchasers, rendered null, void, and worthless by the judgment of the United States court of appeals given herein.

2d. There is a conflict between the circuit court of appeals and this Court in this:

(1.) The circuit court of appeals, in effect, holds that it is bound by the decision of the supreme court of Texas, given long after the bonds had been issued and after they were purchased by your petitioner, construing the constitution of Texas and the enabling act, while this Court has uniformly held in such cases that the Federal courts were not bound by the construction placed upon the constitution and the enabling act by the State court.

(2.) Notwithstanding the fact that neither the constitution nor the enabling act creates or designates any officer or tri-

bunal, other than the county commissioners' court, to determine whether the facts existed which authorized the issuance of the bonds, or whether the conditions precedent had been complied with by the county commissioners' court before the bonds were issued, the United States court of appeals held the recitals made on the face of the bonds by the officers, and the court, authorized by the enabling act to execute them, were not binding on the county, and did not estop it to deny the truth of such recitals against your petitioner, who, it was conceded, was a *bona fide* purchaser and holder of said bonds, and held that your petitioner was charged with notice of the assessed values of the taxable property of Nolan county, as shown by the last official assessment-rolls thereof; and, further, that your petitioner was charged with notice of the fact that at the time the bonds were issued no provision was made for levying and collecting a tax to pay the interest, and provided a sinking fund of two (2) per centum; while this Court, since the decision of Knox County *vs.* Aspinwall, 21st Howard, 545, down to and including the latest decisions on the question, has uniformly held that recitals made on the face of the bonds under these circumstances were binding on the municipal corporation as against a *bona fide* purchaser, and estopped it to deny the truth of such recitals.

(3.) The United States circuit court of appeals, in its decision given herein, in effect holds that the recitals on the face of the bonds made by the county commissioners' court of Nolan county are recitals of conclusions of law and not conclusions of facts, while this Court has uniformly held since the case of Knox County *vs.* Aspinwall, 21 Howard, down to and including Bernard's Township *vs.* Morrison, 133 U. S., 253, that such recitals were recitals of conclusions of facts and not of conclusions of law where such recitals, as in this case, were made by the officers designated by law to issue the bonds, and where no other officer or tribunal had

been created or designated to determine whether the conditions imposed by law had been complied with, and where neither the constitution nor the enabling act, as in this case, had prescribed no other rule of evidence to determine whether the conditions precedent had been complied with or whether the facts existed which authorized the issuance of the bonds.

3d. The judgment of the United States circuit court of appeals is in conflict with and overrules the decisions of the supreme court of Texas, given long before the bonds in this suit were issued, construing the constitution and statutes of Texas, in this:

(1.) In *Ex parte* Towles, 48 Texas, 428; *Ex parte* Whitlow, 59 Tex., 274; Austin *vs.* G., C. & S. F. R. R. Company, 45 Texas, 269; Anderson County *vs.* H. & G. N. R. R. Company, 52 Texas, 241, and I. & G. N. R. R. Company *vs.* Smith County, 54 Texas, 15, the supreme court of Texas held that the county commissioners' court, being a court created by the constitution and having its jurisdiction conferred upon it by the constitution, was a court of *general jurisdiction*, and that its judgments and orders, given in the matters falling within its jurisdiction, were final, conclusive, and binding; that they were not subject to review, by appeal or otherwise, by any of the courts of Texas, and that such judgments and orders were not subject to collateral attack, and the rule announced by the supreme court of Texas in these cases has never been modified or overruled by that court. The point was not raised in The State *vs.* Nolan County, while the United States circuit court of appeals by its judgment rendered herein holds, in effect, that the orders and judgments of the county commissioners' court of said Nolan county, made and given in the matter of issuance of the bonds in suit, were subject to collateral attack, and that they were not binding on Nolan county, and that said county might in a collateral proceeding show

that said orders and judgments were void because not warranted by the facts existing at the time they were made and given.

(2.) And the judgment of the United States circuit court of appeals is in conflict with and overrules the decisions of the supreme court of Texas in that it holds the bonds void because issued in excess of the constitutional limit and because conditions imposed by the constitution had not been complied with by those who issued the bonds, while the supreme court of Texas, in Robinson *vs.* Breedlove and in Waxahachie *vs.* Brown, *supra*, held that the constitution of Texas neither limited nor imposed any conditions or restrictions upon the issuance of such bonds.

Twentieth. Your petitioner avers that this is the first case in which it has been sought to obtain the construction by this Court of the section of the constitution of Texas hereinbefore set forth and the section of the enabling act hereinbefore copied. The validity of a large amount of bonds issued by municipal corporations of Texas, purchased by non-residents of the State long before the State court construed the constitution and the enabling act adversely to their validity, and at a time when the decisions of this Court, given in similar cases, upheld the validity of such bonds, depends upon a final and conclusive construction hereof by this Court.

Wherefore your petitioner prays that this honorable Court will be pleased to grant a writ of *certiorari* in this case to the United States circuit court of appeals for the fifth circuit to bring this cause before this honorable Court, and for such other relief as to this honorable Court may seem just.

JOHN J. BUTTS,
Counsel for Quaker City National Bank, Petitioner.

WASHINGTON CITY, *District of Columbia*, } ss:

John J. Butts, being duly sworn, says that he is attorney for the appellant, The Quaker City National Bank, and is authorized to make this verification on his own behalf, the appellant being a corporation of the State of Ohio and absent from the district in which this case was brought and from the District of Columbia; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge. The sources of deponent's knowledge and the grounds of his belief are found in the proceedings and in the records of the cause in the circuit court and the United States circuit court of appeals.

JOHN J. BUTTS.

Sworn to before me this 10th day of December, 1895.

[SEAL.] JAMES D. MAHER,
Notary Public.

[Endorsed:] Quaker City National Bank *vs.* Nolan County. Petition for writ of certiorari. Jno. J. Butts, counsel for petitioner.

Office Supreme Court U. S.
FILED.
JAN 20 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM 1895.

No. 825.

THE QUAKER CITY NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

NOLAN COUNTY, DEFENDANT IN ERROR.

Brief for Plaintiff in Error in Support of Petition for Certiorari.

JOHN J. BUTTS,
Counsel.

BAILEY & ROSE, PRINTERS, WHITESBORO, TEXAS.

Supreme Court of the United States.

THE QUAKER CITY NATIONAL BANK, Plaintiff in Error,

vs.

NOLAN COUNTY, Defendant in Error

On Petition For Certiorari to Bring up Record.

BRIEF FOR PLAINTIFF IN ERROR IN SUPPORT OF PETITION.

This action was brought against Nolan County in the Circuit Court of the United States for the Northern District of Texas, to recover $5,280.00 due on 66 interest coupons, said coupons representing installments of interest due on 11 negotiable coupon court-house bonds issued and sold by said Nolan County. The cause was tried by the circuit judge, on an agreed statement of facts, without the intervention of a jury. (Rec. pp. 17, 25.)

Under the pleadings and the facts, the following issues were presented for determination by the court:

(1.) Does the constitution of Texas limit, restrict or impose any conditions upon the issuance of court-house bonds by counties of the state?

(2.) Had the supreme court of Texas so construed the constitution of the state as to limit, restrict, or impose conditions upon the issuance of court-house bonds by counties?

(3.) Were the bonds involved void because issued in excess of the limit prescribed by section 9, of article VIII of the constitution of Texas?

(4.) Were the bonds sued upon void because of the failure of the county commissioners' court of Nolan County to comply with the provisions of section 7, of article XI of the constitution of Texas, requiring provisions to be made at the time of creating a debt for levying and collecting a sufficient tax to pay the interest thereon and provide a sinking fund of not less than two per centum?

(5.) Was Nolan County estopped by recitals made on the face of the bonds to deny that all conditions precedent required, either by the constitution or the enabling act, had been performed by those whose duty it was made to issue the bonds before they were issued, and to deny that the amount of bonds issued was within the limit prescribed by the constitution and the enabling act?

(6.) Were the judgments of the county commissioners' court of Nolan County rendered in the matter of issuing the bonds subject to collateral attack in this suit?

Three of the bonds involved, Nos. 6, 7 and 8, contained, INTER ALIA, the following recital: "This bond is issued in accordance with the provisions of an act of the legislature of the State of Texas, entitled 'An Act authorizing the county commissioners' court of the several counties of this state to issue bonds for the erection of a court-house, and to levy a tax to pay for the same,'" giving date of approval of the act. (Par. 6 Agreed Facts, Rec. pp. 18, 19.)

Each of the other bonds contained the following recital: "Know all men by these presents, that, in pursu-

ance of an act of the legislature of the State of Texas, entitled 'An Act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same,' (giving date of approval of the act): and in further pursuance of an order of the county commissioners' court of the County of Nolan, entered upon the records of the court thereof at the February term, 1882, authorizing the issue of the bonds of said County, with interest coupons attached, for the purpose of erecting a court-house in said Nolan County, * * * *

Now, therefore, the said County of Nolan, in the State of Texas acknowledges itself indebted, and for value received, promise to pay to————————, * * * *." (Par. 16 Agreed Facts, Rec. pp. 20, 21.)

It was admitted in the facts agreed to that petitioner was a BONA FIDE purchaser and holder of the bonds, and that it purchased them on the 5th day of December, 1885. (Par. 24 Agreed Facts, Rec. p. 23.)

The bonds involved are a part of three different series of court-house bonds issued by Nolan County. Bonds Nos. 6, 7 and 8 are of the first series issued; this series amounted to $8,745.00, and were issued and delivered to the purchaser thereof on April 10th, 1882. (Par. 5 and 6 Agreed Facts, Rec. p. 18.) Of the other bonds, Nos. 1, 2, 3 and 4 are of the second series, and Nos. 24, 25, 26 and 27 of the third series. (Par. 8, 9, 19 Agreed Facts, Rec. pp. 19, 20, 21.) Bonds Nos. 1, 2, 3 and 4 were sold and delivered to the purchasers thereof on June 5th, 1882; and Nos. 24, 25 and 26 were sold and delivered June 19th, 1883, and No. 27 was sold and delivered some time during to latter part of the year 1883. (Par. 16 Agreed Facts, Rec. pp. 20, 21.)

The county commissioners' court of Nolan County for the years 1881, 1882, 1883, 1884, 1885, 1886, and 1887 levied and collected a tax of one-fourth of one per centum on the taxable property of the county for court-house purposes; and paid all interest accruing on the bonds up to and including the interest due April 10th, 1887. (Par. 26 Agreed Facts, Rec. p. 24.)

Each of the bonds involved was signed by the county judge, countersigned by the county clerk, and purported to have been registered by the treasurer of Nolan county, and had the seal of the county commissioners' court of said county affixed thereto. (Par. 5 Agreed Facts, Rec. pp. 18, 19; Par. 16 Agreed Facts, Rec. pp. 20, 21; Par. 23 Agreed Facts, Rec. p. 23.)

The circuit court held that section 7 of article XI of the constitution of Texas applied to, and imposed conditions upon the issuance of court-house bonds by counties, and that the bonds were void because at the time they were issued no provision was made for levying and collecting a sufficient tax to pay the interest thereon and provide a sinking fund of not less than two per centum. The court said: "We are of the opinion that none of the bonds from which the coupons sued on this cause were detached were valid on account of the failure to comply with said constitutional provision at the date of the issuance of the bonds." (Opinion of circuit court, Rec. p. 27.)

The circuit court of appeals affirmed the judgment of the circuit court, saying: "The questions involved in this case are not open questions in this court. On reasoning which we have approved and still consider sound and sufficient, both the vital propositions submitted have been decided by the supreme court of Texas adversely to

the contention of plaintiff in error." (Opinion of circuit court of appeals, Rec. pp. 34, 35.)

The circuit court of appeals held that the supreme court of Texas had so construed section 9 of article VIII, and section 7 of article XI of the constitution of the state of Texas as to limit, restrict and impose conditions upon the issuance of court-house bonds by counties, and so as to charge the purchasers of such bonds with notice of the assessed values of taxable property in the county, and with notice of the fact that a tax sufficient to pay the annual interest and provide a sinking fund of not less than two per centum had not been levied at the date of the issuance of the bonds.

The circuit court of appeals held that the recitals made on the face of the bonds were recitals of conclusions of law and not conclusions of fact; that such recitals did not estop defendant in error to deny the truth thereof; and that the judgment of the county commissioners' court of defendant in error was subject to collateral attack in a suit brought by a holder of the bonds for the collection of interest due thereon.

It is respectfully submitted that the circuit court and circuit court of appeals erred in the judgment rendered herein, and that said courts are in conflict with the supreme court of Texas, and with this court.

POINTS.

(1.) The constitution of Texas neither limits nor restricts the issuance of court-house bonds by counties, nor imposes any conditions precedent to the issue of such bonds.

Following are the constitutional provisions relied on by defendant in error to defeat recovery in this suit:

"The State tax on property, exclusive of the tax necessary to pay the public debt, shall never exceed fifty cents on the one hundred dollars valuation, and no county, city or town shall levy more than one-half of said state tax, except for the payment of debts already incurred, and for the erection of public buildings, not to exceed fifty cents on the one hundred dollars in any one year, and except as in this constitution is otherwise provided." (Art. VIII, Sec. 9, Constitution of Texas, in force when the bonds in this suit were issued. Sayles' Annotated Con. of Tex., p. 560.)

"All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized, upon a vote of two-thirds of the tax payers therein, (to be ascertained as may be provided by law) to levy and collect a tax for the construction of sea walls, breakwaters, or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county, unless provision is made at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent, as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for." (Art. XI, Sec. 7, of Constitution of Texas, Sayles' Annotated Con. of Tex., p. 568.)

Section 9 of article VIII is relied upon to support the plea of excessive issue; and section 7 of article XI to defeat recovery because of the failure of the county commissioners' court of defendant in error to make provision, at the date of issuing the bonds, for levying and collecting a tax sufficient to pay the interest thereon and create a sinking fund of not less than two per centum.

These are the only provisions of the constitution of the state of Texas that have been invoked or relied upon in any case to defeat recovery on the character of bonds here involved; and they are the only constitutional provisions having any reference to, or bearing upon, the creation of debts or issuing of bonds by counties, or to the rate of taxation.

The point now under consideration was urged in the circuit court and in the circuit court of appeals. The circuit court of appeals, in the opinion given herein, says: "On reasoning which we have approved and still consider sound and sufficient, both the vital propositions submitted have been decided by the supreme court of Texas adversely to the contention of plaintiff in error." (Opinion of Court, Rec. pp. 34, 35.) Whether the circuit court of appeals considered this one of the two vital propositions urged before it by petitioner we cannot say, as several objections, all of which we deemed vital, were urged in that court to the judgment of the circuit court. But if the proposition was so considered, then, with all due respect to the circuit court of appeals, and to the distinguished judge who delivered the opinion of the court in the case, it is respectfully submitted that, in no case where it was necessary to a decision of the question involved, has the supreme court of Texas construed either of the foregoing sections, or provisions, of the constitution adversely to the contention here made; and especially is this true as to section 7 of article XI.

The circuit court of appeals cites, and relies upon as authorities on the point, the cases of Citizens Bank vs. The City of Terrell, 78 Texas, 456, and Nolan County vs. The State, 83 Texas, 183, decided by the supreme court of Texas.

In the case of Citizens Bank vs. The City of Terrell, supra, the validity of bonds issued by the City was involved. What was said by the court in reference to section 9 of article VIII, and section 7 of article XI, of the constitution was unnecessary to a decision of the question involved, and was mere DICTUM of the judge who delivered the opinion; for it had already been held, in the same opinion, that sections 4 and 5 of article XI of the constitution applied to and controlled the validity of the bonds. Section 4 limited the rate of taxation by cities of the class of Terrell to one-fourth of one per centum; and section 5 declares that "no debt shall ever be created by any city, unless at the same time provisions be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent. thereon." This constitutional requirement having been held to apply to the bonds involved, it was wholly unnecessary to refer to section 7; and what is said in reference to this section cannot be considered as an authoritative construction thereof. As to section 9 of article VIII it is merely said that it limits the rate of taxation to the amount therein specified; this we neither deny nor consider adverse to our contention. The conclusion reached by the court that the bonds involved were void merely because the tax authorized by the constitution to be levied and collected would not realize a sum sufficient to pay the interest thereon and provide a sinking fund of two per centum, we neither deem a construction of this section of the constitution, nor as affecting petitioner's rights to recover in the Federal courts.

The question of estoppel by recitals made on the face of bonds does not appear to have been raised in Citizens Bank vs. City of Terrell.

Nolan County vs. The State, 83 Texas, 183, the other Texas case relied upon by the circuit court of appeals, was a case involving a part of each series of bonds here sued upon by petitioner. The defense in that case was excessive issue. Section 7 of article XI was not invoked by the County, nor refered to by the court in the opinion rendered; the question of failure to levy the requisite tax was not presented for determination. In that case the supreme court first proceeded to hold all bonds issued by the County void, because the amount exceeded that authorized by the enabling act, as construed in the light of the constitution; then held valid the bonds owned by the State in virtue of a validating act passed by the legislature of Texas, [redacted] for the purpose of curing defects in, and validating, bonds in which the officers of the State had invested the permanent public school funds. On the question of excessive issue the court said: "The question of excess in the amount of the indebtedness DEPENDS UPON THE CONSTRUCTION OF THE STATUTE. It must be interpreted in the light of the constitutional provisions which relate to the same subject matter." The court then refers to what is said in reference to section 9 of article VIII on the constitution in Citizens Bank vs. City of Terrell, where it is stated that this constitutional provision is a limitation on the power to tax, and concludes that, because the constitution had restricted the power to tax, purchasers of court-house bonds issued by counties were charged with notice of the assessed values of taxable property of the county as shown by the last official assessment rolls. In this case, as in Citizens Bank vs. City of Terrell, the only con-

struction given of section 9 of article VIII of the constitution, is to hold that it limits the rate of taxation. Of the construction we do not complain, for the constitution plainly limited the rate of taxation for court-house purposes to one-half of one per centum; the conclusion reached that, because of this limitation on the power to tax, purchasers of bonds were charged with notice of the assessed values of taxable property, certainly was no construction of the section of the constitution; this, at most, was merely the conclusion of the court as to the effect of the constitutional restriction on the power of counties to levy and collect taxes. Cases have been decided by this Court where it has accepted the construction of a statute or a constitution by the state courts, but refused to adopt the conclusions drawn by the state court from the constructions given. (Pana vs. Bowlder, 107 U. S., 540, 541.)

Gould vs. The City of Paris, 68 Texas, 514, and City of Terrell vs. Dessiant, 71 Texas, 772, are similar to the case of Citizens Bank vs. City of Terrell, supra, in which the validity of city indebtedness was involved. In neither of these latter cases was the question of estoppel by recital on the face of the instrument sued on raised. And, as in the case of Citizens Bank vs. City of Terrell, there were other constitutional provisions held to bear directly upon, and to control the questions presented for determination.

The cases above cited and referred to, are the only cases decided by the supreme court of Texas, in which it is claimed that the constitutional provisions now under consideration have been construed adversely to the contention of petitioner; and upon an examination of them, we feel confident that this Court will concur with us in the conclusion that there has been no such authoritative

construction of the constitution of Texas by its supreme court as can in the least militate against the contention of the petitioner, that it neither limits, restricts nor imposes conditions precedent upon the issuance of court-house bonds by counties.

That section 9 of article VIII is a mere limitation on the power of counties to levy and collect taxes, and not a limitation or restriction on the power and authority to create debts or issue bonds, is a proposition made manifest by its perusal. We do not deny that, under this constitutional provision, Nolan County could not have levied and collected a tax of more than one-half of one per centum on the one hundred dollars valuation of taxable property for any one year for the purpose of paying the bonds issued by it. But a limitation on the amount of taxes that may be levied and collected in any one year, is one thing; and limitation on the amount of indebtedness that may be legally incurred is quite another. We are frank to admit that, under this section of the constitution Nolan County could not have collected a tax of more than one-half of one per centum in any one year for the purpose of erecting a court-house; but nothing is said in this section of the constitution in reference to the creation of debts or the issuing of bonds by counties, except to limit the rate of taxation for the payment of debts theretofore incurred. The liability of a municipal coporation is no more to be measured by its ability to pay, than is the liability of an individual or private corporotion to be measured by the same standard. We have found no case, and believe none can be found, where it was held that inability to pay at maturity, or inability to ever pay, was a good defense to an action brought against a municipal corporation, a private corporation or an individual. The debt being otherwise valid, a municipal corporation, like a private corporation

or an individual, is liable at law, and in equity, on negotiable paper put in circulation, although it may appear that it is hopelessly insolvent and will never be able to pay. This section of the constitution being a limitation on the power of counties to levy and collect taxes for the purpose of paying bonds issued for the erection of courthouses, purchasers of such bonds would no doubt be charged with notice of this limitation; but if a county should create a debt, and issue bonds in evidence thereof, in excess of the amount which the tax authorized would pay at maturity or in excess of the amount which the authorized tax would pay the interest and provide a sinking fund, such indebtedness, or bonds issued in evidence thereof, would not for this reason be void; the utmost effect this limitation could have upon the indebtedness would be to postpone its payment—compel the creditor to wait—until the tax authorized by law would liquidate it.

A careful reading and analysis of section 7 of article XI of the constitution clearly and plainly indicates that the conditions therein imposed upon the creation of debts by counties have reference solely to those counties bordering on the coast of the Gulf of Mexico, and to the character of debts by said section authorized. The sense and grammatical construction of the clause, "But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent. as a sinking fund; AND THE CONDEMNATION FOR THE RIGHT OF WAY FOR SUCH WORKS SHALL BE FULLY PROVIDED FOR," shows unmistakably that it was intended to refer to, and impose conditions precedent upon the character of debts previously authorized in this section of the constitution; in the previous part of the

section counties were authorized to incur indebtedness, and to issue bonds in evidence thereof, for the purpose of constructing sea walls, breakwaters, and for sanitary purposes; nothing is said therein concerning the erection of court-houses, nor to issuing bonds for such purpose.

"A proviso is a limitation, or exception, to a grant made, or authority conferred, the effect of which is to declare that the one shall not operate, nor the other be exercised, unless in the case provided."

Potter's Dwarris' Stat. & Con. Construction, p. 119.
Voorhis vs. Bank, 10 Pet., 471.

The authority conferred upon counties by this section of the constitution was to create debts and issue bonds in evidence thereof, not for the purpose of erecting court-houses, but for the construction of break-waters, sea walls, and for sanitary purposes. By no other provision of the constitution is a county authorized to create a debt or issue a bond for any purpose. Then, if a proviso is a "limitation, or exception, to a grant made, or authority conferred," this clause of section 7 of Article XI of the constitution must refer only to the character of debts authorized to be created and bonds authorized to be issued in the former part of the section.

Neither of said sections of the constitution limit, restrict, or impose conditions upon the issuance of court-house bonds by counties; the supreme court of Texas has never, in a case where it was necessary for a determination of the issues involved, construed either of said sections as limiting, restricting, or imposing conditions upon the issuing of such bonds; and petitioner claims the right, guaranteed it under the Federal constitution, to have the independent judgment of the Federal Courts on the question of the validity of its bonds.

II. At the time petitioner purchased the bonds involved in this suit, the effect of the decisions of the supreme court of Texas on the question was to hold that the State constitution neither limited, restricted, nor imposed conditions precedent upon, the issuing of courthouse bonds by counties; and if it be conceded that, in decisions rendered since the bonds were issued and since petitioner purchased them, the supreme court of Texas has given a different interpretation of the constitution, such decisions can in no way effect the validity of the bonds here sued on; for if they were valid under the constitution as construed at the time petitioner purchased them, no subsequent change of opinion by the State court could effect their validity. Petitioner has the right to have the validity of the bonds determined by law as it was declared to be at the time he became the owner thereof.

Burgess vs. Seligman, 107 U. S., 32.
Carroll County vs. Smith, 111 U. S., 556.
Anderson vs. Santa Anna, 116 U. S., 362, 365.
Endfield vs. Jordan, 119 U. S., 680.
Pine Grove vs. Talcott, 86 U. S., 666, 677-679.
Butz vs. Muscatine, 8 Wall., 579.
Gilpeck vs. Du Buque, 1 Wall., 175.

The City of Corpus Christi vs. Woessner, 58 Texas, 462, decided in 1883, was the first case decided by the supreme court of Texas involving the validity of municipal indebtedness created under the present constitution. In that case the City of Corpus Christi contended no provision was made for levying and collecting a sufficient tax to pay the interest thereon and provide a sinking fund of not less than two per centum. In support of this contention section 7 of Article XI, of the constitution was cited and relied upon to defeat recovery by the plaintiff. In

the opinion given in the case the supreme court did not even mention, much less undertake to construe this section of the constitution. Its silence on the question was equivalent to an express declaration that this section of the constitution had no reference to municipal indebtedness, other than that thereby specially authorized to be incurred. And Corpus Christi is a city bordering on the coast of the Gulf of Mexico, too. And in the opinion rendered in that case the supreme court intimates very strongly that section 5 of Article XI, since construed by that court as applying to all cities, had no reference to cities of ten thousand inhabitants, or less. That the force of this intimation on the part of the Texas court may more fully appear, said section 5 is here copied:

"Cities having more than ten thousand inhabitants may have their charters granted or amended by special act of the legislature, and may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful, for any one year, which shall exceed two and one-half per centum of the taxable property of such city; and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent. thereon." (Art. XI, sec. 5, Con. of Texas, Sayles' Annotated Con. of Texas, p. 568.) The case of the City of Corpus Christi vs. Woessner was decided two years before petitioner purchased the bonds herein sued upon.

The case of Robinson vs. Breedlove, 61 Texas, decided in 1884, was brought by certain tax-payers to restrain the county commissioners' court of Washington county from issuing bonds in evidence of a debt created for the purpose of repairing the court-house of that

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county. The county contended (1) that the bonds were authorized by the act of February 11th, 1881, the same act under which the bonds here involved were issued; and (2) that section 7 of Article XI conferred upon it the authority to issue them. After holding that the act of February 11th, 1881, did not authorize the issuing of negotiable bonds for the purpose of REPAIRING a courthouse, the supreme court said: "By a reference to our constitution, too, it will be seen that in some instances where municipal corporations are authorized to incur indebtedness, express power is given to issue bonds and levy a tax to redeem them. Art. XI, sections 5 and 7. It may be fairly inferred from this that its framers did not INTEND THAT THIS POWER SHOULD BE EXERCISED IN ANY OTHER CASES; AT LEAST THAT IT SHOULD NOT BE DEDUCED FROM THE CONSTITUTION ALONE." P. 323. That case was decided in 1884, one year before petitioner became the owner of the bonds herein sued on.

In Waxahachie vs. Brown, 67 Texas, 519, the validity of certain bonds issued by the town of Waxahachie was involved. In the opinion rendered by the court it is said: "Article 11 of the constitution, in so far as it refers to towns and cities, is principally devoted to a careful restriction of these powers. As to towns there is no provision indicating authority to create a debt, nor any to issue bonds, except possibly for the purpose of paying any indebtednesss which had accrued up to the time the constitution went into effect. (Con. Art. XI, section 6.) By section 5, the power of annual taxation in cities having over ten thousand inhabitants is limited to two and one-half per cent. on its taxable property, and the amount of indebtedness authorized to be created is correspondingly restrained by the declaration that no debt shall be created 'unless at the same time provisions

be made to assess and collect annually a sufficient tax to pay the interest thereon and provide a sinking fund of at least two per cent. thereon.' A LIKE RESTRICTION IS PLACED ON CITIES UPON THE COAST IN REGARD TO INDEBTEDNESS AUTHORIZED TO BE CONTRACTED FOR THE CONSTRUCTION OF SEA WALLS, BREAKWATERS, AND FOR SANITARY PURPOSES. Art. XI, section 7. THE RIGHT OF CITIES AND TOWNS HAVING TEN THOUSAND INHABITANTS OR LESS TO ISSUE BONDS BEING NEITHER GRANTED NOR PROHIBITED, WAS EVIDENTLY LEFT TO THE WISDOM OF THE LEGISLATURE." P. 527.

Here we have a plain and unequivocal declaration of the supreme court of Texas that section 7 of Article XI of the constitution has reference solely and exclusively to cities on the coast, and to indebtedness authorized to be created for the purpose of constructing sea walls, breakwaters, and for sanitary purposes. As this section uses the same language in reference to cities as to counties, the effect of the construction given, is to hold that it refers to, and includes, only counties on the coast, and to debts contracted for the purpose of constructing breakwaters, sea walls, and for sanitary purposes. It is true, this case was not decided until after petitioner purchased the bonds herein sued upon, but the construction of the constitution given in the case has never been overruled, modified or questioned in any case decided by the supreme court of Texas, where a construction of section 7 of Article XI was necessary for a determination of the question involved. The construction there given this section of the constitution is in consonance with that given in Corpus Christi vs. Woessner and Waxahachie vs. Brown, supra. The officers of the State of Texas charged with the duty of investing the permanent public school fund of the State in good and safe securities evidently re-

lied upon the construction given the constitution in these cases, and did not believe the constitution limited, restricted, or imposed conditions precedent upon the issuing of court-house bonds by counties, as they invested said funds in portions of each series of bonds held and owned by petitioner. As proof that the legal profession and investors did not believe the constitution limited, restricted, or imposed conditions upon, the issuance of such bonds, it is only necessary to say that over $300,000 of municipal bonds, issued practically under the same circumstances as were those of petitioner, have found a ready market in the money centers of the country; most of which have been repudiated since Citizens Bank vs. City of Terrell, Nolan County vs. the State, and Francis vs. Howard County have been decided.

The circuit court and circuit court of appeals in holding that the validity of the bonds sued on depended on the interpretation of the constitution of Texas given by the supreme court of the state after their purchase by petitioner, is in conflict with this Court. (See Authorities Sup. cited under this proposition.)

III. If we are mistaken in our contention that, at the time petitioner purchased the bonds, the constitution of Texas had been so construed by the supreme court of the State as not to refer to, limit, restrict, or impose conditions precedent upon the issuance of court-house bonds by counties, then it is submitted that at the time of the purchase of the bonds there had been no construction of the constitution by the State courts to the effect that the constitution does restrict, limit, or impose conditions precedent upon the issuing of such bonds, and the decisions of the state courts, given since the petitioner purchased the bonds, are not binding on the Federal courts.

The question of the validity of negotiable municipal bonds in the hands of a BONA FIDE purchaser, belongs to the domain of commercial jurisprudence where the decisions of the State courts do not furnish the rule of decisions in the courts of the United States, even though the construction of a state constitution or statute be involved.

Burgess vs. Seligman, 107 U. S., 32.
Knox County vs Ninth National Bank, 147 U. S., 91.
Carroll County vs. Smith, 111 U. S., 556.
Bolles vs. Brimfield, 120 U. S., 759.
Pana vs. Bowlder, 107 U. S., 540, 541.
Anderson vs Santa Anna, 116 U. S., 362, 365.
Pine Grove vs. Talcott, 19 Wall., 666, 677, 678, 679, 680.
Oregon vs. Jennings, 119 U. S., 73.
Gilpeck vs. Du Buque, 1 Wall., 175.
Concord vs. Robinson, 121 U. S., 165.
Enfield vs. Jordan, 119 U. S., 680.
Barnum vs. town of Oklona, 148 U. S., 396, 397.
Olcott vs. Fon Du Lac, 16 Wall., 678.
Douglass County vs. Pike, 101 U. S., 636.
Cass County vs. Johnson, 95 U. S., 360.

The bonds involved in this suit were issued in 1882 and 1883, (Par. 5 and 16 Agreed Facts, Rec. pp. 18, 20, 21.) and purchased by petitioner on December 5th., 1885. (Par. 23 Agreed Facts, Rec. p. 23.) The cases of Gould vs. City of Paris; Dessiant vs. City of Terrell; Citizens Bank vs. City of Terrell and Nolan County vs. the State were all decided by the supreme court of Texas since the bonds were issued, and since they were purchased by petitioner. In such cases this court has uniformly held, when the question was presented for determination, that the decisions of the state courts do not furnish the rule of decisions for the Federal courts. If the Federal courts are to be precluded in this manner from giving their independent judgment on questions involving the rights of

Now, conceding, as we do, that section 9 of article VIII of the constitution is a limitation on the power to tax; that under this constitutional limitation Nolan County could not have levied and collected a tax of more than fifty cents on the one hundred dollars in any one year, is there anything contained in the section which, according to any recognized canon of construction, can be so construed as to charge a purchaser of court-house bonds with notice of the assessed values of taxable property of the county as shown by the official assessment rolls, or as even a limitation on the power to issue such bonds? Nothing is therein said concerning the creation of debts, or of issuing bonds. ASSESSED VALUES of taxable property is not mentioned; and in the clause of the section authorizing a tax for the erection of public buildings the word VALUE does not appear. That part of the section reads: "except for the purpose of the payment of debts already incurred, and for the erection of public buildings, not to exceed fifty cents in any one year." Can it be said with reasonable justice to the purchaser of court-house bonds that this language creates or prescribes a rule of evidence to prove whether the bonds have been issued in compliance with law, or whether the amount comes within the limit fixed; or, that it refers such purchaser to the assessment rolls for evidence concerning the assessed values of taxable property in the county? It was evidently not the intention of the framers of the constitution to make a rule of evidence to prove these facts, at least not by the language here used.

If section 7 of Article XI of the constitution requires the levy of a sufficient tax to pay the interest on bonds and provide a sinking fund of not less than two per centum, it certainly cannot be said that it refers the purchaser of bonds to any officer, tribunal, or public record

for proof of compliance with the requirement. No officer, tribunal or record is referred to or mentioned. If the purchaser is charged with notice of the levy, or failure to levy, of this tax, he is left completely in the dark as to the source from whence the information is to be derived. It surely was not made his duty to search through the entire body of the organic and statutory law of the State for evidence on the question: Who was to levy the tax, and where was the record thereof to be found? To impose such conditions upon the purchaser of municipal bonds would be equivalent to saying so much bonds should be issued or sold: under such conditions no purchaser could have been found.

Besides, if such tax was required to be levied, it was a duty imposed upon the county for the benefit of the purchaser of the bonds. If the officers and agents of the county vested with the authority, and charged with the duty of levying the tax have failed or refused to make the levy, only the bond-holder was injured, and he alone can complain. We are familiar with no principle of law or equity which will permit defendant in error to escape payment of the bonds on the ground that it has failed to discharge a duty it owed to petitioner. The enabling act says the interest on court-house bonds shall be paid annually on the 10th. day of April. (Sec. 4 of Enabling Act, infra.) The proposition that the failure to pay any installment of interest at maturity would avoid the bonds, would be as logical and as much in consonance with the principles of law and equity, as the conclusion that the failure to levy the required tax would render them void. This presents an entirely different case to those in which the officers of a municipal corporation in issuing bonds have exceeded their authority, or failed to perform some duty owed to the tax-payers, as where bonds have

been issued in excess of the amount authorized by law, or where bonds have been issued without the assent of the requisite number of voters, when such assent was required as a condition precedent. Defendant in error has not attempted to show how it was injured by failure to levy the requisite tax, if it, in fact was not levied, and we cannot perceive how it could have been injured by such failure; if it was not injured, it has no right to complain.

IV. Notwithstanding the fact that neither the constitution nor the enabling act creates or designates any officer or tribunal, other than the county commissioners' court, to determine whether the conditions precedent imposed by law had been complied with, or whether the facts existed which authorized the issuing of the bonds; and notwithstanding the further fact that the determination of all matters IN PAIS had been, by law, left to the county commissioners' court, the circuit court of appeals held that the recitals made on the face of the bonds by the officers authorized by the enabling act to execute them, were not binding on the county, and did not estop it to deny the truth of such recitals against petitioner who, it was conceded, was a BONA FIDE purchaser and holder of the bonds; and further that petitioner was charged with notice of the fact, that at the time the bonds were issued no provision was made for levying and collecting a sufficient tax to pay the interest thereon and create a sinking fund of not less than two per centum; while this Court, since the decision of Knox County vs. Aspinwall, 21 How., 545, has uniformly held that recitals made on the face of negotiable bonds under such circumstances were binding on the municipality, and estopped it, as against a BONA FIDE purchaser, to deny the truth thereof.

We have already copied herein section 9 of article

VIII, and section 7 of article XI, of the state constitution, relied upon by defendant in error to defeat recovery on the bonds involved. (Supra pp.—6—.) For failure to comply with the provisions of the latter section the circuit court and circuit court of appeals held the bonds void.

Following is a copy of the enabling act, under the provisions of which the bonds in suit were issued:

"Chapter 9. An act authorizing the county commissioners' court of the several counties of this state to issue bonds for the erection of a court-house, and to levy a tax to pay for the same.

Section 1. Be it enacted by the Legislature of the State of Texas, That the county commissioners' court of any county which has no court-house at its county seat is hereby authorized and empowered to issue the bonds of said county, with interest coupons attached, in such amount as may be necessary to erect a suitable building for a court-house; said bonds running not exceeding fifteen years, and redeemable at the pleasure of the county, and bearing interest at the rate of eight per centum per annum.

Section 2. The commissioners' court shall levy an annual AD VALOREM tax on the property of said county sufficient to pay the interest and create a sinking fund for the redemption of said bonds, not exceeding one-fourth of one per cent. for any one year.

Section 3. The county shall not issue a larger number of bonds than a tax of one-fourth of one per cent. annually will liquidate in ten years; and such bonds shall be sold only at their par or face value.

Section 4. The interest on the bonds shall be paid

annually on the 10th day of April, and they shall be registered, and an account kept by the county treasurer of the amount of principal and interest paid on each.

Section 5. Said bonds shall be signed by the county judge, countersigned by the county clerk, and registered by the treasurer before they are delivered.

Section 6. (Emergency clause, providing that the act take effect from and after its passage.)

Approved, February 11th, 1881."

Bonds Nos. 6, 7 and 8, herein involved, contain the following recital: "This bond is issued in accordance with the provisions of an act of the legislature of the state of Texas, entitled 'An Act authorizing the county commissioners' court of the several counties of this State to issue bonds for the erection of a court-house, and to levy a tax to pay for the same.' Approved February 21, 1879." (Par. 6, Agreed Facts, Rec. pp. 18, 19.)

This recital gives an erroneous date of approval of the act, but as the caption is recited in full, and as this was the only statute in force at that time, or that had been enacted, authorizing the issuing of bonds for the erection of court-houses, the mistake in date of approval of the act, does not affect the binding force of the recitals.

Commissioners vs. January, 94 U. S., 205, 206.

The other bonds involved contain this recital: "Know all men by these presents, that, in pursuance of an act of the legislature of the State of Texas, entitled 'An Act authorizing the county commissioners' court of the several counties of this state to issue bonds for the

erection of a court-house, and to levy a tax to pay for the same.' Approved, February 11, 1881, and in further pursuance of an order of the county commissioners' court of the County of Nolan, aforesaid, entered upon the records of the court thereof, at the February term, 1882, authorizing the issue of the bonds of said county, with interest coupons attached, for the purpose of erecting a court-house in said Nolan County, * * * *

Now, therefore, the said Nolan County, in the State of Texas, acknowledges itself indebted, and for value received, promises to pay to———————— * * * *." (Par. 16, Agreed Facts, Rec. pp. 20, 21.)

Each of said bonds was signed by the county judge and counter-signed by the county clerk of defendant in error, and purported to have been registered by the treasurer thereof; (Par. 23, Agreed Facts, Rec. p. 23,) and had the seal of the county commissioners' court of the county affixed thereto. (Par. 6, Agreed Facts, Rec. pp. 18, 19; Par. 16, Agreed Facts, Rec. pp. 20, 21.)

It was admitted in the facts agreed to that petitioner was a a BONA FIDE purchaser and holder of bonds. (Par. 23, Agreed Facts; Rec. p. 23.)

The following constitutional provisions were in force in Texas when the bonds in suit were issued:

"The judicial power of this State shall be vested in one supreme court, in a court of appeals, in district courts, in county courts, in commissioners' courts, in courts of justices of the peace, and in such other courts as may be established by law. * * * * (Constitution of Texas, art. V, sec. 1; Sayles' Annotated Con. of Tex. p. 535.)

"* * * * Each county shall in like manner be divided

into four commissioners' precincts, in each of which shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge as presiding officer, shall compose the county commissioners' court, which shall exercise such powers and jurisdiction over all county business as is conferred by this constitution and the laws of the State, or as may hereafter be prescribed." (Constitution of Texas, art. V, sec. 18; Sayles' Annotated Con. of Tex., p. 546.)

The following statute law, in addition to the enabling act, supra, was in force in Texas when the bonds were issued:

"Said courts (county commissioners' courts) shall have power and in it shall be their duty. * * * *

7. To provide and keep in repair court-houses, jails and all necessary public buildings.

8. To audit and settle all accounts against the county and direct their payment. * * * *

11. To punish contempts by fine not exceeding twenty-five dollars, or imprisonment not exceeding twenty-four hours. * * * *

12. To issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed upon such court, and to enforce its jurisdiction." (Revised Civil Statutes of Texas, of 1879, Art. 1530.)

The constitutional and statutory provisions here quoted, when considered in connection with the enabling

act and section 9 of article VIII and section 7 of article XI of the constitution of Texas, clearly show not only that neither the enabling act nor the constitution created or prescribed any rule of evidence to determine whether the bonds had been issued in compliance with the conditions imposed, nor referred the purchaser to any source for information in regard to the matter, but that the determination of all extrinsic facts was left to the county commissioners' court.

The opinion of the circuit court of appeals holding the defendant in error not estopped to deny the truth of the recitals made on the face of the bonds is in conflict with, and attempts to overrule a long and unbroken line of decisions by this Court on the question.

Knox County vs. Aspinwall, 21 How., 545.
Humbolt Township vs. Long, 92 U. S., 644, 645.
Marcey vs. Oswego, 92 U. S., 638, 639-641.
Dallas County vs. McKinzie, 110 U. S., 637.
Wilson vs. Salamanca, 99 U. S., 504.
Bernards Township vs. Morrison, 133 U. S., 253.
Coloma vs. Eaves, 92 U. S., 490, 491.
School District vs. Stone, 106 U. S., 18[illegible].
Ottawa vs. Hackett, 99 U. S., 95, 96.
Anderson County vs. Beall, 113 U. S., 227.
Moultrie County vs. Fairfax, 105 U. S., 3[illegible].
Caffee vs. Potter County, 142 U. S., 365, 369.
——— Insurance Company vs. Bruce, 105 U. S., 333.
Com. of Marion Co. vs. Clark, 94 U. S., 278.
Orleans vs. Platt, 99 U. S., 276.
Venice vs. Murdock, 92 U. S., 497.
Dixon County vs. Field, 111 U. S., 93.
Lake County vs. Graham, 130 U. S., 674.
Oregon vs. Jennings, 119 U. S., 73.
Buchanan vs. Litchfield, 102 U. S., 290.

The rule is thus stated in Colonna vs. Eaves, supra, and, we believe, it has never been modified, overruled or questioned by this Court: "Where legislative authority has been given to a municipality, or its officers, * * * * to issue negotiable bonds, * * * * but only on some precedent condition, * * * *, and where it may be gathered from the legislative enactment that the officers of the municipality were vested with the power to decide whether the condition precedent had been complied with, their recital that it has been, made on the face of the bonds issued by them and held by a BONA FIDE purchaser, is conconclusive of the fact, and binding on the corporation, for their recital is a decision of the fact by the appointed tribunal."

In Knox County vs. Aspinwall, supra, this Court said in reference to this question: "* * * * and the ascertainment of the fact was necessarily left to the board itself, AS NO OTHER TRIBUNAL WAS PROVIDED FOR THAT PURPOSE."

In Bernards Township vs. Morrison, supra, where the authority of the officers who executed the bonds to determine the matters IN PAIS was questioned because such authority was not expressly given to them, it was said: "Such express authority is seldom found in the act providing for the issuing of bonds. IT IS ENOUGH THAT FULL CONTROL IS GIVEN TO THE OFFICERS NAMED."

Do the bonds involved come within the rule announced by this Court in these decisions? If so, then the circuit court of appeals is in conflict with this Court. We have seen that the constitution, even if it is held to limit, restrict, or impose condititions precedent upon the issuing of such bonds, prescribes no rule of evidence to prove whether the limit has been exceeded, or the conditions

complied with. No officer or tribunal is designated by that instrument to determine these facts: no public record or other source of information is pointed out to the purchaser where he may learn, upon investigation, whether the bonds have been issued in compliance with the conditions imposed. The constitution in creating the county commissioners' court conferred upon it jurisdiction over all such county business as was given by the constitution and the laws then in force, and as might thereafter be prescribed. (Con. of Tex. art. V, sec. 18, supra.) By article 1530 of Revised Civil Statutes of Texas of 1879, supra, general jurisdiction over the matter of providing and keeping in repair court-houses is conferred upon that court; and it is given authority to audit and settle, and direct to be paid, accounts against the county. By the enabling act that court is authorized to issue the bonds; it is given full control over the matter. The bonds were executed as the law directed; they were signed by the county judge, counter-signed by the county clerk, and purport on their face to have been registered by the treasurer of the county; and they have the seal of the county commissioners' court affixed thereto. We think it clear that it "may be gathered from the constitution and the enabling act that the officers of the county who executed the bonds were vested with the power and authority to decide whether the conditions precedent had been complied with and whether the amount of bonds issued was within the limit prescribed." Their decision is certified on the face of the bonds, and, under the decisions of this Court, is binding on defendant in error and cannot be denied.

The supreme court of Texas in Citizens Bank vs. the City of Terrell, and Nolan County vs. the State, and the circuit court of appeals in Francis vs. Howard County, 4

C. C. A. 460 and Millsap vs. the City of Terrell, 8 C. C. A. 554, cited and relied on by the circuit court of appeals as authorities controling this case, attempt to bring negotiable bonds issued by counties of Texas within the rule laid down in Dixon County vs. Field, 111 U. S., 93, Lake County vs. Graham, Lake County vs. Rollins, and Lake County vs. Sutliff, supra. We insist that there is a broad distinction between the case presented by petitioner and those cases. In Dixon County vs. Field, and in the cases following the rule there announced, the very section of the state constitution authorizing the issuing of the bonds, limited the amount thereof to a certain designated per centum of the ASSESSED VALUATION of taxable property in the municipality. In discussing the effect of this reference to assessed values of taxable property, made in the constitution, it was said: "The case is to be distinguished from Marcey vs. Oswego (supra), where, although it was provided that the amount of bonds voted by any township should not be above such a sum as would require a levy of more than one per centum per annum on the taxable property of such township to pay the yearly interest, it was held that the existence of sufficient property to warrant the amount of the subscription and issue, IT NOT BEING DESIGNATED AS FIXED BY THE ASSESSMENT, was one of those pre-requisite facts to the execution and issue of the bonds, which was of a nature that required examination and decision, and had been referred by the statute to the inquiry and determination of the board." In the cases of Lake County vs. Graham, Lake County vs. Rollins, Sutliff vs. Lake County and Chaffee vs. Potter County (supra) the amount of bonds that might be lawfully issued was "designated as being fixed by the assessment." The distinction, then, between those cases and the case presented by petitioner, is, that there the constitution

had not only limited the amount of the issue, but had also prescribed a rule of evidence to determine whether the amount of bonds issued came within the limit fixed: the amount of the issue was "designated as being fixed by the assessment:" while here, the existence of sufficient property to warrant the amount of bonds issued, and the levy of the requisite tax, "were pre-requisite facts to the execution and issue of the bonds, which were of a nature that required examination and decision, and had been referred by the constitution and statute to the inquiry and determination of the county commissioners' court." In regard to the question of excessive issue, the statute under which the bonds in Marcey vs. Oswego, Humbolt Township vs. Long, Wilson vs. Salamanca, and Dallas County vs. McKinzie (supra) were issued was substantially the same as the statute under which the bonds of petitioner were issued, and the recitals made on the face of the bonds are similiar; and it is submitted that the bonds here involved come within the rule laid down in those cases.

That the reasoning upon which the supreme court of Texas reached the conclusion that the bonds were void because of excessive issue, may appear to this Court, so much of the opinion delivered in Nolan County vs. the State (supra) as refers to that question is here copied:

"The question of the excess in the amount of indebtedness depends upon the construction of the statute. It must be interpreted in the light of the constitutional provisions which relate to the same subject matter. In Bank vs. City of Terrell, section 9 of article VIII of the constitution, as amended in 1883, was construed, and it was held that the amount of indebtedness which counties, cities and towns were authorized to create for the erection of public buildings, etc., was limited to 25 cents

on the one hundred dollars worth of property, as shown by the assessment rolls of the municipality. The word 'valuation,' as used in the section, was held to mean value as fixed by competent authority for the purpose of taxation. The result of that decision is that governing bodies of municipal corporations are not empowered, when ascertaining the amount of indebtedness to be created, to determine for themselves the aggregate value of property therein subject to taxation, but are to be governed by the official assessment rolls made out by the assessor.

"The original section of the constitution was in force when the bonds in suit were issued, but it is subject to the same construction. If instead of being limited to the amount of taxable property, as shown by the assessment rolls, the constitution had conferred upon the county commissioners' court the power to determine that question for themselves, then, according to the rule laid down in Marcey vs. Oswego, 92 U. S., and recognized in Bank vs. City of Terrell, supra, their determination of the matter would have been conclusive, and would have precluded inquiry into the power to issue the bonds in so far as the question of amount is concerned. But, the power being limited as to the amount of the official assessment rolls, the commissioners were not authorized to look beyond them, and determine the extent of their power from other DATA within their reach. In such a case the rule established in Dixon County vs. Field, 111 U. S., 94, and acted upon in Bank vs. City of Terrell, supra, applies. If our constitution was silent upon this subject, then it might be reasonably held that section 3 of the statute (the enabling act, supra,) authorized the commissioners' court to determine the question as to the amount of bonds a 'tax of one-fourth of one per cent. annually would liquidate in ten years.' But their being a provision of the constitution bearing directly up-

on the subject, we are of the opinion that this section must be construed in connection with it. The limit in the constitution being an amount upon which a tax of one-half of one per cent. would pay the annual interest and two per cent. as a sinking fund, and the statutory reqirement being such an amount as a tax of one-fourth of one per cent. would liquidate in ten years, it was not absolutely necessary that the county commissioners' court should be governed by the same rule in determining the two limits. As an amount of indebtedness that would be liquidated in ten years, though based upon a valuation in excess of that shown by the assessment rolls, might still be within the constitutional limit, which permitted the creation of such a debt as would be ultimately paid by annual tax of one-half of one per cent. upon the taxable values as shown by the assessment rolls. But we think it reasonable to presume that the legislature intended that the same rule should govern in determining the two limits, and that the commissioners' court should not have looked beyond the assessment rolls in ascertaining the amount of indebtedness which the statute authorized them to create." The bonds were held void because a larger amount had been issued than a tax of one-fourth of one per centum of the taxable property of the county, as shown by the official assessment rolls for the year 1881, would liquidate in ten years.

It will be seen from what the court said in that case that the bonds were held void on the sole ground that the county commissioners' court exceeded its authority. It may be true, as said by the state court in that case, that, in determining the amount of bonds permitted by the statute to be issued, the county commissioners' court was not authorized to look beyond the assessment rolls, and determine the question from other DATA; but whether it did, in fact, look beyond the assessment rolls for evidence

of the existence of sufficient property to authorize the issue, cannot, in the least, effect the bonds sued upon by petitioner. The question is not: Did the county commissioners' court exceed the authority conferred upon it, or, or did it base its action on improper evidence? But, Did the constitution or the enabling act create or designate any rule of evidence to determine this fact, and did they, or either of them, refer petitioner to any source of information for proof of the fact that the bonds had been issued in excess of the authority conferred, or that the tax required as a condition precedent to the issue of the bonds had not been levied?

It is not said in Nolan County vs. the State, nor in any other case decided by the supreme court of Texas, that either the constitution or the enabling act, in express terms, charged the purchaser of municipal bonds with notice of any fact. The effect of the decisions of the State court is to hold that bonds issued in excess of the authority conferred are void, even in the hands of a BONA FIDE purchaser, merely because the officers who issue them exceeded their authority, a proposition denied by this Court in many cases decided by it. It does not matter what limitations, restrictions, or safeguards the constitution and the legislature may have intended to place upon the issue of such bonds, if such intention has not been expressed. "It does not belong to courts to interpolate constitutional restrictions. Their duty is to apply the law, not to make it. All powers may be abused when no safeguards are provided. The remedy in such cases is with the people, and not with the judiciary." (Pine Grove vs. Talcott, 86 U. S., 666.)

The supreme court of Texas, and the circuit court of appeals, in adopting the reasoning and conclusions of the

State court, have attempted to interpolate constitutional restrictions and limitations upon the issuing of municipal bonds, omitted by the framers of the constitution. We insist that this cannot be done to the prejudice of petitioner. And we contend for an application of the law as it is written and not as it was intended to have been written, and without judicial interpolations, to the facts in this case.

V. If the constitution of Texas does, in fact, impose any restrictions, limitations, or conditions precedent upon the issuing of court-house bonds by counties, the enabling act under which the bonds in suit were issued impose more onerous restrictions, limitations and conditions precedent than does the constitution, and it would have been impossible to issue the bonds in compliance with the conditions imposed by the enabling act, and within the limit prescribed by it, without complying with every condition imposed by the constitution, and without bringing them within the constitutional limit; the recitals made on the face of the bonds that they were issued "in accordance with the provisions of," and "in pursuance of" the enabling act, reciting its caption and giving the date of approval, necessarily imported that every constitutional requirement had been met and complied with by those whose duty it was made to execute them; and defendant in error is estopped, as against petitioner, to deny the truth of such recitals, or to deny that they were issued in compliance with the conditions, if any, imposed by the constitution.

By no possible construction can the constitution be so interpreted as to impose conditions, restrictions or limitations upon the issuance of court-house bonds by counties not found in the enabling act. Not only are all possible restrictions, limitations, and conditions im-

posed by the constitution to be found in the enabling act: but the restrictions, limitations and conditions of the act are much more restrictive and onerous than are those of the constitution. If the constitution is held to limit or impose conditions precedent upon the issuing of such bonds, it certainly does no more than to limit the issue to such an amount as a tax of one-half of one per centum annually will pay the interest and provide a sinking fund of two per centum: in other words the limitation in the constitution contended for by defendant in error, limits the amount of the issue to such a sum as a tax of one-half of one per centum will liquidate in fifty years, and requires a tax sufficient for this purpose to be levied and collected: while the enabling act limits the amount of the issue to such a sum that a tax of one-fourth of one per centum would liquidate in ten years, and requires the levy and collection of a sufficient tax to pay the annual interest and provide a sinking fund for the redemption of the bonds at maturity, or, in this case, fifteen years. In such a case a recital made on the face of a negotiable bond to the effect that it was issued "in accordance with the provisions of," or "in pursuance of" the enabling act, reciting its caption, is equivalent to a direct and specific recital, or statement, made on the face of the bond that it was issued in pursuance of the conditions imposed by the constitution.

This Court has, in numerous cases decided by it, held that recitals made on the face of negotiable municipal bonds similar to the recitals contained in the bonds herein sued upon, were equivalent to a direct and specific declaration made by those whose duty it was to issue them, that each and every condition annexed to the power to issue them had been complied with, and that every fact made necessary to their validity existed when they were issued.

Marcey vs. Oswego, 92 U. S., 638.
Humbolt Township vs. Long, 92 U. S., 645.
Wilson vs. Salamanca, 99 U. S., 504.
Moultrie vs. Fairfax, 92 U. S., 631, 633.
Venice vs. Murdock, 92 U. S., 495.
Clay County vs. Society for Savings, 104 U. S., 586.
Dallas County vs. McKinzie, 110 U. S., 687.

If the statement made on the face of the bonds be true, a larger amount than a tax of one-fourth of one per centum annually would liquidate in ten years was not issued; and, at the time the bonds were issued, a tax sufficient to pay the annual interest and create a sinking fund for the redemption of the bonds at maturity was levied by the county commissioners' court. And this statement imported compliance with every constitutional requirement, and estopped defendant in error from denying the truth of the facts so stated.

Buchanan vs. Litchfield, 102 U. S., 290, 291.
Independent School District vs. Stone, 106 U. S., 187.
Oregon vs. Jennings, 119 U. S., 73.
Pana vs. Bowlder, 107 U. S., 540, 541.
Chaffee County vs. Potter, 142 U. S., 365, 369.

VI. The circuit court of appeals in its opinion given herein, in effect, holds that the recitals made on the face of the bonds by the county commissioners' court of defendant in error are recitals of conclusions of law, and not of conclusions of fact; while this Court, since the decision of Knox County vs. Aspinwall, 21 How. 545, has uniformly held such recitals to be recitals of conclusions of facts, and not of conclusions of law, where, as in this case, the recitals were made by the officers designated by law to execute the bonds, and where no other officer or

tribunal has been designated to determine whether the conditions precedent imposed by law had been complied with, and where neither the constitution nor the enabling act prescribed any rule of evidence to determine whether the conditions annexed to the power to issue the bonds had been complied with, or whether the facts existed which authorized the issuing of the bonds. In this respect the circuit court and circuit court of appeals are in conflict with this Court.

Knox County vs. Aspinwall, 21 How., 545.
Marcey vs. Oswego, 92 U. S., 638.
Humbolt Township vs. Long, 92 U. S., 645.
Wilson vs. Salamanca, 99 U. S., 504.
Moultrie County vs. Society for Savings, 92, U. S., 631, 633.
Venice vs. Murdock, 92 U. S., 495.
Independent School District vs. Stone, 106 U. S., 187.
Insurance Company vs. Bruce, 105 U. S., 328.
Walnut vs. Wade, 103 U. S., 638.
Van Hostrup vs. City of Muscatine, 1 Wall., 291, 297.
Benard Township vs. Morrison, 133 U. S., 523.

In this case the court does not say in so many words that the recitals made on the face of the bonds are recitals of conclusion of law, and not of conclusions of facts; but Francis vs. Howard County, 4 C. C. A. 480, 482, decided by the same court, is cited and relied on as authority in point. In that case the recitals contained in the bonds were subtantially the same as recitals in the bonds owned by petitioner. It was urged by the holder of the bonds that the county was estopped by the recitals contained in the bonds. In reply to this, the court said: "The answer to this contention of plaintiff in error is that the recital on the face of the bonds sued on is not so much a recital of conclusion of facts, as of a conclusion of law." In the

decision of this case the circuit court of appeals must have adhered to the conclusion announced in the Howard County case; for if it had changed its conclusions in this respect, a different judgment must of necessity have been given.

The result of the case of Francis vs. Howard County, and this case in the circuit court of appeals is, we believe, due to a misconception of the rule announced by this Court in Dixon County vs. Field, and of the effect of that rule.

VII. The circuit court and circuit court of appeals are in conflict with, and attempt to overrule, decisions of the supreme court of Texas, construing the constitution and statutes of the State, given long before the bonds in suit were issued, in this:

Since the adoption of the present constitution of Texas, the State supreme court has uniformly held, when the question was presented for determination, that the county commissioners' court, being a court created by the constitution, and having its jurisdiction conferred upon it by the organic law, is a court of general jurisdiction within its limited sphere, and that its judgments and orders given in matters falling within its jurisdiction are final and conclusive; that its judgments and orders are not subject to review by appeal or otherwise, and that they cannot be attacked in a collateral proceeding. These decisions of the supreme court of Texas have never been overruled, modified or questioned by that court. The circuit court of appeals, in the judgment rendered herein, in effect, holds that the judgment of the county commissioners' court given in the matter of issuing the bonds is subject to collateral attack; that such judgment is neither conclusive nor binding, and that the county could, in a

collateral proceeding, show that the judgment was void because not warranted by the facts existing at the time it was rendered.

It was urged in the circuit court and in the circuit court of appeals that county commissioners' court of defendant in error, by which the bonds in suit were executed and issued, was a court created by the constitution, and by the constitution given exclusive jurisdiction over the finances and business of the county, and that no other court had power to review, annul, or set aside its judgments, decrees or orders; that the finding by the court, certified on the face of the bonds, that they were issued "in accordance with the provisions of," "and in pursuance of" the enabling act was a judgment of a court of competent, exclusive and final jurisdiction over the matters upon which it passed in issuing the bonds, and was binding on defendant in error and could not be attacked in a collateral proceeding. (11th. Assignment of Error. Rec. p. 32.)

Ex Parte Towles, 48 Texas, 413, decided in 1877, was a contested election case arising under the present constitution. The legislature had enacted a statute attempting to confer upon the districts courts power to entertain appeals from the county commissioners' courts in contested election cases. In passing upon the the constitutionality of this legislative enactment, the court said: The constitution provides "that the judicial power of this State shall be vested in one supreme court, in a court of appeals, in district courts, in county courts, in commissioners' courts, in justices of the peace, and in such other courts as may be established by law." (Constitution of 1876, art. 5, sec. 1.)

It defines the general limits of their respective jurisdictions, and either expressly or from terms used, indi-

cates the subject matter of their action, their relation and mode of proceeding in the exercise of their jurisdictions.

The commissioners, court is here made a part of the judiciary, with its organization provided for, and its objects, and mode of action indicated, by declaring that it shall exercise such powers and jurisdiction over all such county business as is conferred by this constitution and the laws of the State, or as may hereafter be prescribed. (Art. 5 sec. 18.)" p. 431.

Again: "It was certainly the object of the framers of the constitution to mark out a complete judicial system, by defining generally the province of each of the courts, by reference to the objects confided to the action of each, and the relation of each to the others. To that extent it must be held permanent, and not subject to change by the legislature, except as change may have been provided for." p. 439.

It was held that the act, in so far as it attempted to confer upon the district courts power to review judgments of the county commissioner's courts, was unconstitutional; and that the judgment af the county commissioners' court was final and conclusive, because the matters upon which it passed came within the jurisdiction conferred upon that court by the constitution.

In Ex Parte Whitlow, 59 Texas, 273, decided in 1883, in passing upon the constitutionality of a legislative enactment which attempted to confer original jurisdiction upon the district court in certain contested election cases, the court said: "The constitution does not expressly prohibit the legislature from conferring either appellate or orginal jurisdiction upon district courts, which is not given by the constitution itself; but it must be presumed

that the constitution conferred upon each court created by it all the jurisdiction which it may have intended it should exercise, and that the legislature has no power to add to, or withdraw therefrom, except as such power is expressly conferred by the constitution upon the legislature, as in sec. 22, art. 5." And it was held that the legislature could not confer upon district courts original jurisdiction over those matters, which, under the constitution, came within the jurisdiction of the county commissioners' court. The legislature has no power to withdraw from the jurisdiction of any constitutional court. See, also:

Lane vs. Williams, 52 Texas, 343.
Gibson vs. Templeton, 62 Texas, 557.
Ball vs. Williams, 52 Texas, 607.
Austin vs. G., C. & S. F. R. R. Co., 45 Tex., 269-271.
Anderson County vs. H. & N. R. R. Co., 52 Tex., 241.
I. & G. N. R. R. Co. vs. Smith County, 54 Tex., 15.
Creswell Ranch and Land Co. vs. Roberts County, (Texas Case.) 27 S. W. Reporter, 737.

Creswell Ranch & Land Company, supra, decided by the civil court of appeals of Texas, was brought to recover taxes alleged to have been illegally levied and collected; among other things, it was alleged by the plaintiff company that the tax was not levied and collected for the purpose specified in the order of the county commissioners' court making the levy. In reply to this contention the court said: "We consider this to be a collateral attack upon the record of a tax levy. A collateral attack upon a judgment is defined to be any proceeding which is not instituted for the express purpose of annulling, correcting or modifying such decree, or enjoining its execution. (Morrill vs. Morrill, (Oregon,) 25 Pacific Reporter, 362.) The express purpose of this suit is the recovery of money. All matters stated in the petition are

CONSTITUTION OF 1869.

ARTICLE III.

"SECTION 1. Every male person who shall have attained the age of twenty-one years, and who shall be (or who shall have declared his intention to become) a citizen of the United States, or who was, at the time of the acceptance of this Constitution by the Congress of the United States, a citizen of Texas, and shall have resided in this State one year next preceding an election, and the last six months within the district or county in which he offers to vote, and is duly registered, (Indians not taxed excepted), shall be deemed a qualified elector.

ARTICLE XII.

"SECTION 32. The inferior courts of the several counties of this State shall have the power, upon a vote of two-thirds of the qualified voters of the respective counties, to assess and provided for the collection of a tax upon the taxable property, to aid in the construction of internal improvements: Provided, that said tax shall never exceed two per cent. upon the value of such property."

ARTICLE V.

"SECTION 20. Justice of the peace shall have such civil and criminal jurisdiction as shall be provided by law, and the justices of the peace in each county, or any three of them, shall constitute a court, having such jurisdiction, similar to that heretofore exercised by the county commissioners and police courts, as may be prescribed by law. And when sitting as such court the justice who resides at the county seat shall be the presiding justice."

but so many grounds upon which recovery is sought. * * * * * *

The tax-payer of a county, having jurisdiction to levy the tax, is bound by the proceedings of the commissioners' court acting within the scope of its powers, as entered of record, and cannot impeach the same collaterally, if at all, for fraud, as might a third person a judgment to which he is not a party." p. 739.

Austin vs. G., C. & S. F. R. R. Co., supra, was a suit brought against the Gulf, Colorado & Santa Fe Railroad Company and the sheriff of Galveston County to restrain the collection of taxes, which had been levied and assessed by the county court of Galveston county, to provide a sinking fund and for payment of interest on certain bonds issued and TO BE ISSUED by Galveston county to the Gulf, Colorado & Santa Fe Railroad Company.

At the time the bonds in that suit were issued the constitution of 1869 was in force in Texas: under that constitution the county courts of the different counties had and exercised the same jurisdiction in reference to business affairs of counties as do the county commissioners' courts under the present constitution. Under the law in force when the bonds were issued, electors desiring to exercise the right of suffrage were required to register. The enabling act under which the bonds were issued, required the proposition to issue them to be submitted to the voters of the county at an election to be held for that purpose, and only authorized the issue in case two-thirds of the qualified voters of the county had voted in favor of the proposition. It was urged by those seeking to enjoin the collection of the tax, that two-thirds of the qualified voters of the county had not voted

in favor of the proposition to issue the bonds, and that this was made manifest by an examination of the registration books, which were offered in evidence to impeach the validity of the bonds. In regard to this contention the court said: "It is made the duty of the court (county court) to ascertain and record the result of the election. Evidently the court may be unable to say from a count of the vote and an inspection of the registration lists whether or not two-thirds of the qualified voters have voted for the proposition. And yet it is the duty of the court to do so. A matter of great importance, involving judgment and discretion is entrusted to its determination. It necessarily follows, that the court is empowered and must resort to and use the appropriate means to inform itself and enable it to arrive at a proper and correct conclusion. * * * *

Other objections are made to the action of the court in ascertaining and declaring the result of the election. If, however, we concede the most that can be claimed for them, it would be found that they were mere irregularities or errors in the course of a judicial proceeding, for which the judgment could not be impeached at the time and in the manner proposed by the appellants in this case." pp. 269, 270.

Anderson County vs. Houston & Great Northern Railroad Company, supra, was a suit brought by Anderson County to enjoin the transfer of certain bonds issued by the county to said Railroad Company, and to enjoin the collection of a tax levied for their payment. The bonds in this suit were issued under the same constitution and statutes as were those in Austin vs. G. C. & F. S. R. R. Co., supra. Anderson County sought to impeach the judgment of the county court that issued the bonds on the ground that the proposition to issue them had not re-

ceived the requisite number of of votes at an election held for the purpose of voting thereon. In disposing of this question the court said:

"Under the constitution and laws then in force, the county court was composed of five justices of the peace, and was intrusted with powers of different kinds. In some cases its power was clearly judicial. * * * * * In its judicial capacity, it was an appropriate tribunal to ascertain and record the result of the election. Speaking of this statute and of the county court, this court has said: 'A matter of great importance, involving judgment and discretion, is intrusted to its determination.' (Austin vs. G. C. & S. F. R. R. Co., 45 Tex., 270.)

In the present case, it was more than two and a half years after the election, and after the determination of its result, when this suit was instituted, SEEKING TO IMPEACH THE JUDGMENT AND CONCULSION OF THE COUNTY COURT.

Until the road had been constructed, it does not appear that the validity of the election was questioned by the county officials. Certainly the time to do so had passed when the determination of the county court had been acted on for more than the period allowed for CERTIORARI, a bill of review, or writ of error. If, in ascertaining the result of the election, the county court be regarded as a special tribunal, its action would certainly not be subject to review by the district court for a longer period than in ordinary cases. * * * *

The proposition that if the result of such an election is by law to be ascertained and declared by any tribunal, the action of that tribunal is conclusive unless it be impeached or sought to be revised in a direct proceeding instituted in time, is supported by numerous decisions of the Supreme Court of the United States and other courts. (Knox County vs. Aspinwall, 21 How. 545; Munson vs.

Town of Lyon, 12 Blatch., 545; Rock creek vs. Strong, 96 U. S., 278; Marcey vs. Oswego, 92 U. S., 638; Coloma vs. Eaves, 92 U. S., 484.)

It cannot be denied that the law authorizes the submission of the proposition, nor that if the election was held in such a way as to deprive citizens entitled to vote of the right to do so, or if illegal votes were received or other regularities were committed, that these facts, however sufficient to have authorized the county court to set aside the election, or to support a direct proceeding to revise the action of that court, do not make the election void, or authorize the determination of its result to be collaterally attacked." pp. 241, 242, 243.

It will be seen from the foregoing authorities and extracts from opinions of the Supreme court of Texas, that, at the time the bonds in suit were issued, and when petitioner purchased them, the county commissioners' court was considered and held to be a court of exclusive and final jurisdiction in all matters of which it was given cognizance by the constitution and legislative enactments passed in pursuance thereof. The constitution of 1879 confers upon the county commissioners' court jurisdiction over all county business: "The county commissioners so chosen, with the county judge as presiding officer, shall compose the county commissioners' court, which shall exercise such powers and jurisdiction over all county business as is conferred by this constitution and the laws of this State, or as shall hereafter be prescribed." (Con. Art. 5, sec. 18.)

The general statutes of the State recognize it as a court; recognize the jurisdiction conferred upon it by the constitution, and provide means for enforcing its jurisdiction:

"Said courts (county commissioners' courts) shall

have power, and it shall be their duty——— * * * *

7. To provide and keep in repair court-houses, jails and all necessary public buildings.

8. To audit and settle all accounts against the county and direct their payment. * * * *

11. To punish contempts by fine not exceeding twenty-five dollars, or imprisonment not exceeding twenty-four hours, * * * *.

12. To issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed upon such court, and to enforce its jurisdiction." (Revised Civil Statutes of Texas, of 1879, Art. 1514.)

"The clerk of the county court shall be EX OFFICIO clerk of the commissioners' court. * * * *." (Revised Civil Statutes of Texas, of 1879, Art. 1530.)

"All notices, citations, writs and process issued from said court shall run in the name of 'The State of Texas,' and shall be directed to the sheriff or any constable of the county, and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon, except subpoenas, which need not be under seal." (Revised Civil Statutes of Texas, of 1879, Article 1531.)

"All process of said court, when not otherwise directed by law, shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpoenas for witnesses may be executed and returned forthwith, when necessary." (Revised Civil Statutes of Texas, of 1879, Article 1532.)

"Sec. 1. Be it enacted by the Legislature of the State of Texas, That the county commissioners' court of any county which has no court-house at its county seat is hereby authorized and empowered to issue the bonds of the county, with interest coupons attached, in such sum as may be necessary to erect a suitable building for a court-house; said bonds running not exceeding fifteen years, and redeemable at the pleasure of the county, and bearing interest at the rate of eight per centum per annum.

Sec. 2. The county commissioners' court shall levy an annual AD VALOREM tax on the property in said county sufficient to pay the interest and create a sinking fund for the redemption of said bonds, not exceeding one-fourth of one per centum in any one year.

Sec. 3. The county shall not issue a larger number of bonds than a tax of one-fourth of one per centum annually will liquidate in ten years, and such bonds shall be sold only at their par or face value.

Sec. 4. The interest on said bonds shall be paid annually on the 10th. day of April, and they shall be registered and an account kept by the county treasurer of the amount of principal and interest paid on each.

Sec. 5. Said bonds shall be signed by the county judge, counter-signed by the county clerk, and registered by the county treasurer before they are delivered." (Act of Feb'y 11th., 1881, under which the bonds in suit were issued.)

Here, then, we have a court created by the constitution for the very purpose of managing and controlling all such business of the county as was then, or might thereafter be conferred upon it. In pursuance of the powers delegated to the legislature by the constitution, it has

conferred upon this court the sole and exclusive power and authority to erect court-houses, issue negotiable bonds in payment therefor, and to levy taxes to redeem such bonds. The whole matter of issuing the bonds is referred to this court. In fact, under the constitution as construed by the supreme court of Texas, the legislature could have conferred this authority upon no other tribunal. (Ex Parte Towles, supra.) The action of the county commissioners' court in executing and issuing the bonds was a judicial proceeding, and not subject to the impeachment in a collateral proceeding on account of errors or irregularities commited in the course of its determination of the matters upon which it passed. (Austin vs. G. C. & S. F. R. R. Co., supra.)

In Anderson County vs. Houston & Great Northern Railroad Company, supra, the supreme court of Texas held that a proceeding instituted to enjoin the transfer of municipial bonds by the original payee being a collateral proceeding, was instituted too late, although only two years and a half had elapsed from time they were issued. While the bonds owned by the petitioner were issued in 1882 and 1883, (Par. 6 and 15 Agreed Facts, Rec. pp. 18 and 20) and this suit was not instituted until 1891, (Plaintiff's First Amended Original Petition, Rec. p. 2.) taxes were levied and collected by defendant in error for the purpose of paying the interest on the bonds for the years 1881, 1882, 1883, 1884, 1885, 1886 and 1887, and all interest paid thereon up to, and including the installment due April 10th, 1887. (Par. 26 Agreed Facts, Rec. p. 24.) Petitioner purchased the bonds December 5th., 1885. (Par. 24 Agreed Facts, Rec. p. 22.) At the time petitioner purchased the bonds all accrued interest had been paid thereon; and the officers of the county recognized the bonds as being valid and binding upon the county. Does the lapse of ten years from the date of issuing the

bonds, and a recognition of their validity for five years give force and vitality to the collateral attack here made on the judgment, not existing in a collateral attack made in half that time, as was the case in Anderson County vs. H. & G. N. R. R. Co., supra, where the suit was between the original parties?

It was not urged in the circuit court of appeals, nor in the circuit court, but it may be urged here, that Nolan County vs. the State, supra, overrules the former decisions of the supreme court of Texas holding that the judgment of the county commissioners' court was not subject to impeachment in a collateral proceeding. In answer to such contention, should it be made, it is only necessary to say that the point was not raised in that case, nor referred to in the opinion of the court. If it had been contended in the State court that the recitals made on the face of the bonds and the orders of the county commissioners' court directing their issue, were judgments of a court of competent and exclusive jurisdiction to issue the bonds and to determine all matters IN PAIS, the conclusion that such contention would have been sustained is irresistable, when the former opinions of that court on the question are considered. The state court has decided so many cases in which it has held the county commissioners' court to be a court of general jurisdiction within its limited sphere, and that its judgments given in matters falling within its jurisdiction were final, conclusive and not subject to review by any other court, nor to be impeached in a collateral proceeding, that this contention, if it had been made there, must have been sustained.

But concede, for the purpose of this argument, that Nolan County vs. the State does overrule the former opinions of the supreme court of Texas holding that judg-

ments of the county commissioners' court was subject to collateral attack, the validity of the bonds involved here could not be effected by such a change in the opinion of the State court. We have shown under a former proposition that a BONA FIDE purchaser of negotiable municipal bonds is entitled, under the Federal Constitution, to have his rights adjudicated and determined by the law as it was declared to be when the bonds were purchased, or at least when they were issued. Under the decisions of the supreme court of Texas given prior to the time petitioner purchased the bonds here involved, the judgments of the county commissioners' court given in such matters were declared to be final and conclusive and not subject to attack in a collateral proceeding. He was justified in relying upon these decisions as the highest evidence of what the law then was; and all he asks is that his rights be determined by the law as it was recognized at the time the bonds were purchased.

This Court has held in so many cases that recitals made on the face of municipal bonds were the judgment of the appointed tribunal, that it is deemed unnecessary to refer to the decisions on that question. Only two or three will be cited.

Coloma vs Eaves, 92 U. S., 490, 491.
Marcey vs. Oswego, 92 U. S., 639-641.
Oregon vs. Jennings, 119 U. S., 74.

VII. If this court should hold that the recitals made on the face of these bonds is not the judgment of the county commissioners' court given in the matter of issuing them, then, we submit, that the orders of that court, authorizing and directing the issue of the bonds, is the judgment of that court and that they are final and conclusive, and cannot be impeached in collateral proceeding; and that the circuit

court and circuit court of appeals, in holding such orders and judgments subject to collateral attack in this suit, are in conflict with the supreme court of Texas.

All the bonds involved in this suit, except Nos. 6, 7 and 8, were issued in pursuance of orders of the county commissioners' court of defendant in error, authorizing the issuance of said bonds for the erection of a court-house; these orders were entered of record in the minutes of the court. (Par. 7, 8, 9, 10, 11, 12, 13, 14 and 15, Agreed Facts, Rec. pp. 19, 20.) Whatever may be said of the recitals made on the face of the bonds, these orders of the county commissioners' courts are its judgments given in the matter of issuing the bonds; and under the decisions of the supreme court of Texas, are final and conclusive, and cannot be attacked in a collateral proceeding.

Ex Parte Whitlow, 59 Texas, 274.
Ex Parte Towles, 48 Texas, 413.
Williams vs Lane, 52 Texas, 335.
Heck vs. Baker, 75 Texas, 472.
Creswell Ranch & Cattle Co. (Texas) 27 S.W.Rep. 737.
Harrell vs. Lynch, 65 Texas, 146.
Austin vs. G., C. & S. F. R. R. Co., 45 Texas, 234.
Anderson County vs. H. & G. N. R. R. Co., 228.
I. & G. N. R. R. Co. vs. Smith County, 54 Tex., 15.

We have already sufficiently referred to these decisions by the Texas courts to show to this court that the county commissioners' court is, under the law as declared at time petitioner purchased the bonds, a court of general jurisdiction within its prescribed sphere.

It is not denied by defendant in error that there was authority to issue the bonds, provided there was sufficient

taxable property in the county to warranted the issue, and provision was made for levying and collecting the requisite tax. These are all matters IN PAIS, mere evidence, or proof of the facts that warrant the court in giving its judgment directing the issue of the bonds. If the county commissioners' court is a court within the meaning and general acceptance of the term; if its action in issuing the bonds is a judicial proceeding; if its judgment given in the matters falling within its jurisdiction are not subject to impeachment in collateral proceedings, all of which has been held by the supreme court of Texas in many cases; and if it had jurisdiction over the matter of issuing the bonds, which cannot be denied, then it was not necessary for the judgment of that court to recite the evidence upon which it was based, any more than it is the duty of ordinary courts of justice to make such recitals in judgments rendered by them. The issuing of the bonds was a proceeding IN REM, and it was only necessary for the judgment roll to show jurisdiction of the subject matter; this was done by the recital in the orders of the court that the bonds were issued for the purpose of erecting a court-house at the county seat of defendant in error. If the bonds were issued for the purpose of erecting a court-house at the county seat of defendant in error it had jurisdiction under the enabling act; and if the erection of a court-house for the use of the county, and paying therefor was "business of the county" it had jurisdiction of the subject matter under the constitution. (Con. Art. V, Sec. 18.)

Defendant in error seeks to avoid the judgments of the county commissioners' court on the sole ground that they were not warranted by the facts existing at the time they were rendered. The supreme court of Texas holds that this cannot be done; the circuit court of appeals holds that it can. There is a conflict between the decis-

ions of the supreme court of the State of Texas and the circuit court of appeals.

VIII. There is a conflict between the circuit court of appeals and this Court, in this: This Court held in Chaffee County vs. Potter, 142 U. S., 365, 369, that purchasers of negotiable municipal bonds were only charged with notice of the issue of such bonds as they held, while the circuit court of appeals, in the judgment given herein, held petitioner to be charged with notice of the issuance of all bonds issued by defendant in error.

Under the rule announced in Chaffee County vs. Potter, supra, petitioner was only charged with notice of the issue of such bonds as it purchased, in absence of evidence that it knew of the issuance of the other bonds. There is nothing in the record showing that petitioner knew of the issuing of any bonds by defendant in error, except those it owned. (Par. 27, Agreed Facts, Rec. p. 24, where the ownership of all bonds issued by defendant in error is accounted for.)

The bonds owned by petitioner aggregate $11,000. (Opinion of circuit court, Rec. p. 16; Par. 5, 6, 7, 8, 9, 10, 11, 27 of Agreed Facts, Rec. pp. 18, 19, 20, 21.)

The assessed values of taxable property of defendant in error for the year 1881, was $361,770; for 1882, $908,276.

For the years 1881, 1882, 1883, 1884, 1885, 1886, and 1887, defendant in error levied and collected a tax of one-fourth of one per centum on the taxable property of the county. (Rec. p. 24.)

A tax of one-half of one per centum on $361,770, the taxable values for 1881, would have realized $1,808, which would have paid the annual interest and provided a sink-

ing fund of two per centum on $18,088 of 8 per cent bonds, the rate the bonds in suit bore. So that there could have been no excessive issue under the constitutional limitation, in so far as the bonds owned by petitioner are concerned, even if the issue is based upon the taxable values, for 1881; as the succeeding years show a marked increase in taxable values, there could have been no excessive issue if based on the values of any year subsequent to 1881.

Bonds Nos. 6, 7 and 8, are of the first series issued by defendant in error, and Nos. 1, 2, 3 and 4 are of the second series; these bonds were issued in 1882. (Par. 5, 6, 8, 16, Agreed Facts, Rec. pp. 18, 19, 20, 21.)

The bonds of these two series owned by petitioner aggregate $7,000. A tax of one-fourth of one per centum on the assessed values of property of defendant in error for 1881, $361,770, would have realized the sum of $904, which would have paid the annual interest and provided two per centum as a sinking fund on $9,040 8 per cent. bonds; we have seen that the taxable values increased materially in subsequent years.

Bonds Nos. 24, 25, 26 and 27 are of the third series issued by defendant in error. While the order authorizing their issue was made April 29th. 1882, (Par. 9 Agreed Facts, Rec. p. 19), they were not disposed of by defendant in error, not in fact issued until June 19th., 1883. (Par. 16 Agreed Facts, Rec. p. 21.) The assessment of Taxes was required by law to be completed by October 1st. of the current year. (Par. 3 Agreed Facts, Rec. p. 17.)

The assesed values of taxable property of defendant in error for 1882, was $908,276. (Par. 2 Agreed Facts,

Rec. p. 17.) A tax of one-fourth of one per centum on this valuation would have realized the sum of $2,270, which would have paid the annual interest and provided a sinking fund of two per centum on 8 per cent. bonds to the amount of $22,700; while the four bonds of the last series added to the sum of the 7 bonds of the first and second series owned by petitioner would only amount to $11,000.

So it will be seen that if the rule laid down in Chaffee County vs. Potter, supra, had been recognized and followed by the circuit court of appeals, the judgment must have been for petitioner. In this respect the circuit court of appeals is in conflict with this court.

IX. Because the fact that the circuit court of appeals is in conflict with this Court on questions of commercial jurisprudence of great importance; and in conflict with the supreme court of Texas on the question of the construction of the State constitution; and because of the fact that the validity of a large amount of bonds issued by municipalities of Texas depend upon a final and conclusive settlement by this Court of the questions involved, petitioner believes this is a case in which a writ of CERTIORARI ought to be granted.

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Counsel for Petitioner.